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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 502.

FRED HARDY, PLAINTIFF IN ERROR,

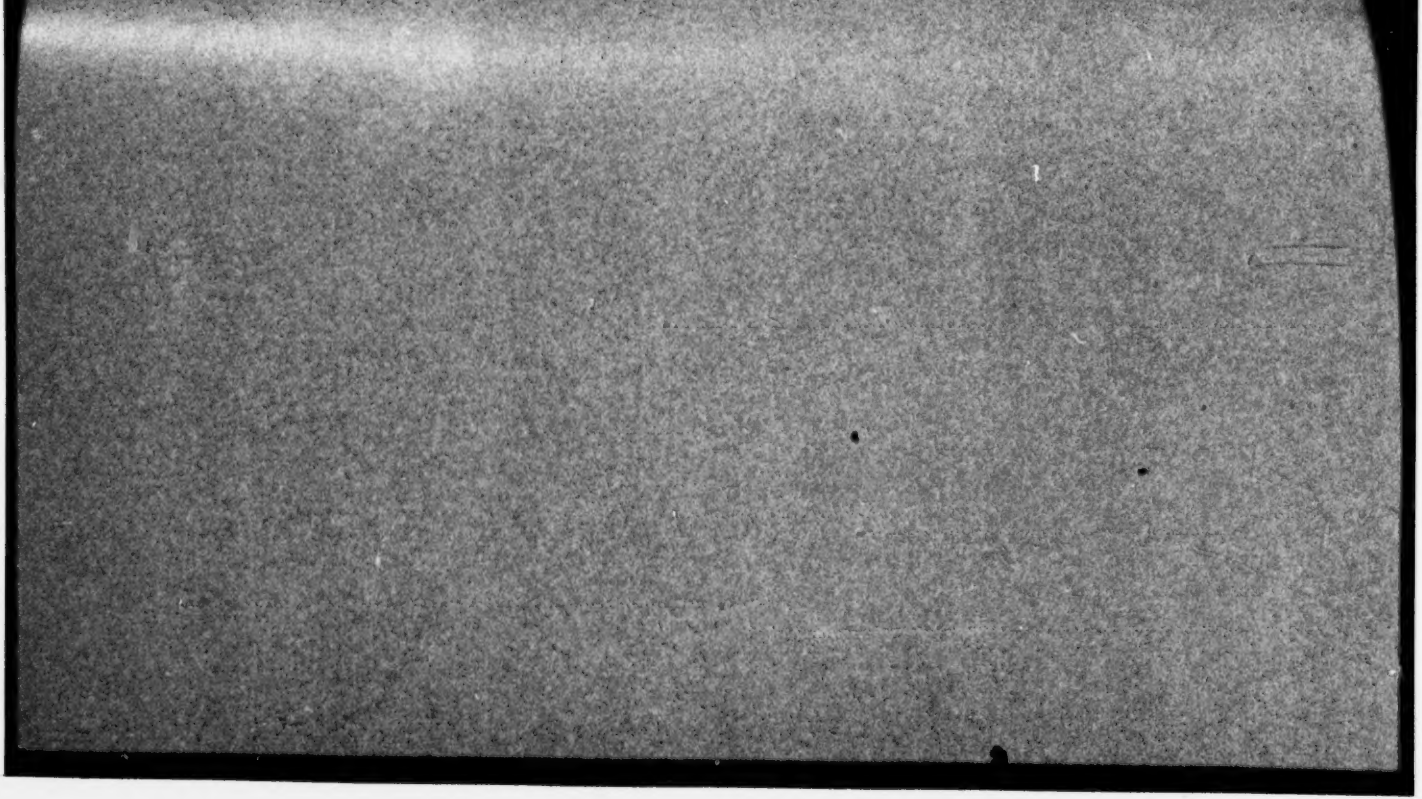
vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

FILED DECEMBER 18, 1901.

(19355)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 502.

FRED HARDY, PLAINTIFF IN ERROR,

VS.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

INDEX.

	Original.	Print.
Bill of exceptions	1	1
Motion for continuance	1	1
Affidavit of Fred Hardy	2	1
R. H. Whipple	9	5
Martin Tricker	13	8
Frank W. Lee	15	9
William C. Bowen	16	9
Charles Schoemer	17	10
J. C. Scott	18	11
John T. Reed	20	12
Cecil W. Newton	22	13
J. C. Scott	23	13
George H. Aston	24	14
Fred Hardy	27	16
Motion for continuance overruled	28	16
Trial commenced	29	16
Testimony of George R. Bourett	30	17
A. J. Kelsey	34	19
J. A. Ellis	39	21
E. T. Baldwin	43	23
J. H. Kehoe	48	26
James Smilie	53	28
L. D. McLean	57	30
A. J. Dibert	62	33
W. A. Miller	66	35

21192—02——0

	Original.	Print.
Bill of exceptions—Continued.		
Testimony of M. L. De Forest	69	37
August Mahrt	72	38
M. H. Lloyd	76	40
O. B. Crane	79	42
Charles H. Hayden	83	45
F. C. Johnson	88	47
Robert Brodnox	91	49
George Paddleford	97	52
E. L. Bosqui	101	54
Ole Nelson	106	56
Case opened for the Government	110	58
Waiver of opening by defense	110	58
Testimony of S. P. Edmonds	111	59
Herman Kotzschmar, jr	114	60
Owen Jackson	120	63
J. C. Scott	194	100
Cecil Newton	225	118
L. Hanson	242	127
G. H. Collinwood	264	138
George Aston	279	146
John Abelsett	413	215
Charles Rosenberg	414	215
J. O'Sullivan	426	221
R. H. Whipple	457	236
John R. Richards	477	247
Owen Jackson (recalled)	484	251
Dr. J. Weeks	485	251
Martin Tricker	487	252
George Aston (recalled)	488	253
Hugh McLachin	492	254
Government rests	492	254
Testimony of Fred Hardy	493	254
Affidavit of George H. Aston	635	330
Defense rests	639	332
Testimony of William C. Bowen	640	332
Martin Tricker	649	336
Frank W. Lee	654	339
Charles Schoemer	659	341
George H. Collinwood	663	343
J. C. Scott	668	345
George Aston	671	346
Cecil Newton	681	350
—— Hanson	684	352
Charley Rosenberg	688	353
Vasila Nosiakof	689	354
Admission as to money orders	693	356
Instructions to jury	696	357
Sentence	697	357
Charge to jury	701	359
Motion for new trial	717	367
Motion in arrest of judgment	718	367
Judge's certificate to bill of exceptions	720	369
Order allowing bill of exceptions	721	369

	Original.	Print.
Indictment	722	369
Motion for a continuance	723	370
Order denying motion for continuance	724	371
Verdict	726	371
Motion for new trial	728	372
Motion in arrest of judgment	729	372
Order overruling motions for new trial and in arrest of judgment	730	373
Order to produce defendant for sentence	731	373
Judgment	732	374
Order extending time to file bill of exceptions	736	376
Petition for writ of error	737	376
Assignment of error	738	377
Order allowing writ of error	743	379
Affidavit of poverty of defendant	744	380
Order allowing writ of error to be prosecuted without cost	745	380
Order staying execution	746	381
Writ of error	747	381
Citation	750	383
Acceptance of service of citation	751	383
Clerk's certificate	752	384

1 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT. } Criminal.

Bill of exceptions.

This cause came on regularly for trial in the above-entitled court at a special term of the said court begun on the 19th day of August, 1901, and held at Unalaska, in said district of Alaska, before the honorable James Wickersham, judge of said court; and thereafter such proceedings were had that on the 22nd day of August, 1901, an indictment was returned against the said defendant for the crime of murder; and thereafter, and on the 2nd day of September, 1901, the defendant moved the court for a continuance of the trial of said cause, and did on said last-named date file a written motion for the continuance of said cause, which written motion is as follows, to wit:

In the district court United States, district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT. } Motion.

Comes now the defendant, and, by his attorney, moves the court for a continuance in said cause until the next term of this court, or for
2 such time as will enable defendant to have a reasonable time in which to prepare for trial and to procure essential and material testimony for his defense. This motion is based upon the affidavit of Fred Hardy, defendant, filed and served herewith.

JOHN W. CORSON,
P. C. SULLIVAN,
Atty'. for Defendant.

Service by receipt of copy admitted at Unalaska this 2nd day of Sept., 1901.

J. K. WOOD,
United States Attorney,
By J. L. MCGINN, *Assistant.*

Filed in the U. S. district court, district of Alaska, second division, Sept. 2, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy.

Whereupon, in support of said motion, the defendant filed an affidavit, which is as follows:

In the district court of the United States in and for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

UNITED STATES OF AMERICA,
Unalaska, Alaska, ss:

Fred Hardy, being first duly sworn, deposes and says: That he is the defendant above named;

That he was arrested on Unimack Island, United States of America, on the 27 day of July, 1901, and brought immediately from said place of his arrest to Unalaska and committed to the public jail, where he has been confined since said date of his commitment;

That on the 23 day of August, 1901, an indictment was returned against him, charging him with the crime of murder; to which indictment, on the 24 day of August, 1901, he entered his plea of "not
3 guilty." On said 24 day of August, 1901, his case was set down for trial for the 27th day of August, 1901;

That ever since his arrest on said day of July, 1901, to the present time, he has been confined in the said jail at Unalaska;

That at the time of his arrest, all the money upon his person, to wit, the sum of six hundred and eighty-five dollars ($685.00) was taken from him by the arresting officer, and still remains, so far as affiant knows, in the hands of said arresting officer;

That he has had no opportunity since said date to procure counsel;

That it has been impossible for him to have any counsel or advice from any attorney;

That there are no attorneys at law at Unalaska, nor in the vicinity of Unalaska, nor upon the Aleutian Islands, and none nearer than Juneau, approximately one thousand miles distant, or Nome, eight hundred miles distant, or Seattle, seventeen hundred miles distant, and there has been no means of communication for him between any of the points where counsel or a lawyer could be secured, from the date of his arrest;

That until the arrival of the district judge for the district of Alaska, at Unalaska, on the 19th day of August, 1901, to hold a special term of the United States district court, called for said date, there has been no attorneys at Unalaska;

That no attorneys arrived at Unalaska, or anywhere in the vicinity thereof, until the date of the beginning of the special term of said court, held at Unalaska, to wit, on the 19th day of August, 1901, at which time, he is informed, some three or four different attorneys arrived;

That prior to that time he had no opportunity to consult or advise with any attorney, or to in any way prepare for the trial of the cause, or had any friends or acquaintances with whom he could consult or make preparations for trial;

4 That he did not have any attorney employed until the date that he entered his plea of "not guilty," at which time the court

appointed an attorney to defend him, to wit, on the 24 day of August, 1901;

That there are material witnesses in the defendant's behalf who could be procured as witnessess at the trial of the said cause if sufficient time were allowed in which to procure them;

That one Captain Mackintosh, captain of the schooner "Aragoo," upon which affiant came from San Francisco to Unimack Island, in the month of June, 1901, which schooner "Aragoo" is now in the waters of the Aleutian Islands, or on the high seas, on the way to San Francisco, California, would testify, if present at the trial, that the affiant left the said schooner "Aragoo" at Cape Labin on the 11th day of June, 1901, at a date subsequent to the date of the alleged commission of the crime charged, and that he was on the said vessel continuously from the time it left San Francisco until the aforesaid date, when he left said vessel;

Also that one John Johnson, mate of said schooner "Aragoo," with whom, and in whose company, the affiant traveled from San Francisco to the said Unimack Island, would swear, if present at the trial, that this affiant was on said schooner continuously from its date of departure from San Francisco to the 11th day of June, 1901, the date on which affiant left said vessel, and that affiant was on said vessel at all times continuously during said period;

That said vessel departed from San Francisco about the 15 day of April, 1901;

That the facts above stated, to which said Captain Mackintosh and the mate above named would testify, are facts which affiant is unable to prove in any other manner, and that said testimony is material and necessary for his defense;

That the affiant did, on the 24th day of , 1901, pro-
5 cure a subpœna summoning the said Captain Mackintosh as a witness in the affiant's behalf; but said Captain Mackintosh has not been found and the schooner "Aragoo" has not, to the affiant's knowledge, been in this port or within the knowledge of the affiant since the date of the indictment against him. And the affiant believes and is informed that the said vessel is liable to return within a reasonable time to this vicinity, and that said Captain Mackintosh and said mate will continue in the service of said vessel, and if it returns will return with the vessel;

That if the said vessel, the said Mackintosh, and the said mate of the vessel do not return, then the depositions of the said Captain Mackintosh and the said mate can be produced in San Francisco, the place where they reside;

The testimony herein mentioned of said persons is material and essential to affiant's defense;

That there are no means of communication from the place where court is held to any part of the Aleutian Islands, except by water;

That there are no telegraphic or cable communications from the Aleutian Islands to any outside point nor are there any cable or telegraphic communications between the different islands of the Aleutian group;

That one , whose name is unknown to affiant, and one , whose name is also unknown to affiant, are material witness' for affiant's defense;

That both of said persons are upon the United States Government boat named the "Pathfinder," which is now plying in the waters of the Northern Pacific Ocean and the Bering Sea, in the vicinity of the Aleutian Islands;

That one of said persons is employed in the engineer's department of said vessel and the other is employed in what is usually called the "galley;"

That the said vessel frequently calls at Dutch Harbor, within
6 one mile of Unalaska, where court is held, for the purpose of coaling, and for anchorage and other purposes;

That on the date of the beginning of this term of court, the 19th day of August, 1901, the said vessel was in port at said Dutch Harbor;

That although no indictment had been found prior to that date, he informed the jailer, who had affiant in charge, that two men, whose names he did not know, were in the employ of the said vessel, and requested him to go to the vessel and inquire of the various men employed for the two men who knew Fred Hardy, the affiant, or Lieutenant Hardy, as he was known by them;

That at this time he had no attorney nor was there any present upon whom he could depend to do anything for him, he being in jail at the said time;

That he does not know whether the said jailer made inquiries or not; but in any event the vessel departed from said Dutch Harbor and had not since returned, and the said men are upon said vessel;

That each of them, if present, would testify that they knew him in San Francisco on or about the 26 March to 15 of April, 1901;

That they were in his company on one or two occasions during such time in San Francisco, and that they saw him have a large amount of money, to wit, either currency of the United States or national bank notes, and an amount in excess of fifteen hundred dollars ($1,500.00);

That the time they were in his company was immediately prior to the time of his departure from San Francisco upon the said vessel "Aragoo," hereinbefore referred to, and that they and each of them advised him to come on said vessel as an employee on said vessel instead of paying fare;

That he is informed and believes that the money taken from his person is claimed by the prosecution as belonging to the person
7 whom it is charged this affiant killed;

That the said money which this affiant had on his person at the time of his arrest was a part of the same money which he had with him in San Francisco upon his departure and which the two persons aforesaid saw him have; and the evidence of said persons and each of them is necessary for his defense, and there is no other person or persons who can testify to the facts which the said two persons would testify to, as before stated;

That the testimony of the said last two persons can be procured readily and the said vessel, the "Pathfinder," is liable to be in port either at Unalaska or at said Dutch Harbor at any time, having on board the said persons;

That one Major Whitney, paymaster of the United States Army at San Francisco, is a material witness for affiant in the trial of said cause and if present would testify as follows:

That this affiant was mustered out of the service of the United States

Army at San Francisco on or about the 28 day of March, 1901, and that this affiant had returned from the Philippine Islands as a soldier in the United States Army and was mustered out of the service at San Francisco on or about the said last-named date;

That said Major Whitney would testify that he paid the affiant eighteen hundred and seventy-five ($1,875.00) dollars in lawful currency of the United States on the 28th day of March, 1901, and that a portion of said money consisted of a number of twenty-dollar ($20) gold certificates;

That since this affiant's arrest he has had no opportunity to communicate with said Major Whitney, nor to have any person communicate with him on his behalf;

That said Major Whitney is permanently stationed at San Francisco, California, as a paymaster in the United States Army at
8 that point, and if cause is continued for a reasonable time, this affiant could either procure his attendance, or, failing in that, could procure his deposition at San Francisco; and affiant says that all of the money taken from his person by the officer when he was arrested, excepting some four or five dollars in silver, was money which was paid to him by said Major Whitney in San Francisco as aforesaid;

That there is no other witness who could testify to the matters which it is stated the said Major Whitney would testify to if present;

That the testimony of each and all of the foregoing witnesses is material, necessary, and essential to a fair and impartial trial of the said cause, and the said affiant can not safely go to trial without the testimony of each and all of said witnesses;

That he has no means and has had no means of any kind to aid himself in any way, and that there are no persons in this vicinity or in the vicinity of the Aleutian Islands on whom he could call for assistance of any kind, and that he is now wholly unable to make any preparations for a defense in said cause and will not be able to do so at any time during the present term of the honorable court.

FRED HARDY.

Subscribed and sworn to before me this 2d day of September, 1901.

JOHN T. REED,
Deputy Clerk U. S. District Court, District of Alaska, Second Division.

Filed in the U. S. district court, district of Alaska, second division, Sept. 2, 1901, at Unalaska. H. G. Steel, clerk. By John T. Reed, deputy.

9 Whereupon the said plaintiff filed counter affidavits in opposition to said motion, which affidavits are as follows:

In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY.

Affidavit of R. H. Whipple, U. S. commissioner.

I, R. H. WHIPPLE, being first duly sworn, depose and say that I am a citizen of the United States, over the age of twenty-one years;

That I am the United States commissioner regularly and duly

appointed for the Dutch Harbor district of the second division of the district of Alaska;

That on the 25th day of July, 1901, a complaint was issued in the United States commissioner's court for the precinct of Dutch Harbor, charging the above-named defendant, Fred Hardy, with the crime of murder;

That thereafter, to wit, on said date, a warrant was issued upon said complaint for the arrest and detention of the said Fred Hardy, upon which said warrant the said defendant, Hardy, was arrested on the 27th day of July, 1901;

That thereafter, to wit, on July 30th, 1901, the preliminary examination of the said Hardy upon the said charge came on regularly for hearing before me, as United States commissioner, at which said time I notified said Hardy of his rights, namely:

The right to have counsel to appear and represent him;

The right to have witnesses brought on his behalf, and the right to refrain from any statement if he saw fit so to do.

That the said Hardy, at the said time, did not make any request
10 for any attorney, and did not make any demand for the issuance of subpœnas to procure the attendance of any witnesses, and did not demand that a subpœna be issued for Captain Mackintosh, captain of the schooner "Arago;" for John Johnson, mate of said schooner "Arago," or for any person aboard the United States Government boat "Pathfinder;"

That at the said time he, of his own volition, freely and voluntarily, and after being advised that it was not necessary for him to make any statement on his own behalf, he, at his own request, made the following statement:

"That on or about, I don't know just the exact date, I left the ship the 9th of June; when I reached the shore it was in a distance I guess of 10 or 12 miles before I struck the shore. When reaching the shore I saw noboby; then I went down a distance of about ten miles further, where I ran onto three men; I took them to be prospectors or miners. I asked those men if I could get something to eat, and the reply was 'yes.' This was at a place called 'The Cove,' where a hunter by the name of Charley Rosenberg had a hunting cabin at that place. I went in and ate supper with these three men, and they asked me who I was and where from. I told them. I stayed with them all that day and that evening, until two o'clock next morning. That evening I asked these parties who they were. One of them that seemed to be the boss told me that they had got blowed away from a fishing schooner called the 'Dove,' and he said his other chums were also off the same vessel.

"They had two dories; one blue finished, I believe, not right; the other a kind of dirty-black color, as far as I can explain; I did not particularly notice.

"That morning, about two o'clock, I left the cabin where the three parties were; don't know their last names. The oldest one, that
11 seemed to be the boss, was named 'Jack;' could not say if a by-name. The other was Jim; never heard name of third person. He was a young fellow. That morning at two o'clock, when I went to leave, I took with me a bag which I supposed belonged to these fellows,

and the bag had in it the stuff. It had in it two gold watches and some razors, knives (don't know now how many), and some other little trinkets, and there was by the table where one was sleeping—he had a Winchester and a forty-four revolver, and the oldest fellow had a gun, don't know the kind, and a revolver, and the other had a revolver—don't know the caliber of it. I took with myself when I left the two revolvers and the bag, and these fellows had provisions, blankets, and clothes. One sailor's clothes bag, and they also had a canvas tarpaulin, with something inside wrapped up in a bag.

"Those three parties were seen and stopped at Charley Peterson's, and also left some clothes at Charley Peterson's, as I understood. Charley Peterson is a hunter and lives close to Marshova, and these people told me that evening, on my asking them how they got away from the ship with all that plunder, one laughed and looked at the other and said, 'Ha, you ain't onto the racket;' 'We made a catch.' That is all on that subject; I never asked them more.

"This is all that I care to state.

(Signed) "FRED HARDY."

UNITED STATES OF AMERICA,
District of Alaska, Second Division, ss:

"I, Fred Hardy, being first duly sworn upon my oath, do say that I have heard the above and foregoing statement read over.

"That I made the same voluntarily and not under duress of any kind whatsoever, and without promise of reward or clemency,
12 and that the facts therein stated are true of my own knowledge.

(Signed) "FRED HARDY."

Subscribed and sworn to before me this 30th day of July, A. D. 1901.

R. H. WHIPPLE,
United States Commissioner in and for the District of Alaska, Second Division, at Dutch Harbor.

That subsequently, on the 6th day of August, 1901, the said Hardy, at his own request, made another and different statement, to wit, substantially as follows:

"That I left the ship 'Arago' about the 9th day of June, 1901, with a man by the name of Laurie, Mate Johnson, Mate Clark, and other sailors, some twelve or thirteen men in all, for the purpose of obtaining water.

"That at that time there was a tent standing on the black sand of the beach near the mouth of the creek.

"That I and Mate Clark went after a fox.

"That he (Hardy) made a complaint that he had lost a glove, and went back to look for it and did not return.

"That this was a pretext made by him for the purpose of getting away from the mate of the boat.

"That he traveled northward until he came to Charley Rosenberg's hunting cabin. That he found in said cabin at said time four men, including one George Ashton. That he had a talk with Ashton. That Ashton told him that these four men had robbed some man further down

the shore and then had killed them. That he (Ashton) then showed him (Hardy) a watch that bore the inscription 'Julia to Florance' or 'Florance to Julia.'

13 "That these men and Aston had a talk in the cabin in the hearing of Hardy, to the effect that if he, Hardy, was not all right they would plant him;

"That Aston told him the next morning that there had been a murder committed on the island, and that 'We had better get out;'

"That he stopped at said cabin with these parties that night, and on the following day he and Aston entered into an agreement whereby they agreed to steal the property on the possession of these parties that night;

"That pursuant thereto that he and Aston, about two o'clock on the following morning, got up and, while the other men were sleeping, stole the rifle, revolvers, watches, and the other things found in his possession when he was arrested, and that he then proceeded to Scott's camp."

R. H. WHIPPLE.

Subscribed and sworn to before me this 2nd day of September, 1901.

JOHN T. REED,
Deputy Clerk U. S. District Court,
District of Alaska, Second Division.

In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY. } Affidavit of Martin Tricker.

I, MARTIN TRICKER, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one

14 years, and at present am employed in the capacity of seaman on the United States steam revenue cutter "Manning;"

That during the years 1898 and 1899 and up to the month of September, 1900, I was a soldier in the Philippine Islands, serving in the First South Dakota Volunteers and the Twenty-eighth Volunteers;

That during the month of October, 1900, I was sentenced by a court-marshal to serve one year at Alcatraz Island military prison on the charge of being absent without leave from my superior officer;

That I arrived at Alcatraz prison, San Francisco, on the 3rd of November, 1900, and continued as a prisoner in said prison until the first day of May, 1901, when I was released from said confinement by virtue of a pardon issued in my behalf;

That at the time that I arrived at said military prison the defendant above named, Fred Hardy, was confined in said prison as a military prisoner, and he told me that he had been sentenced for a term of five years and a forfeiture of all pay and allowance by a military court held in the Philippine Islands;

That during that time he told me that he had been a private in Troop H of the Eleventh Cavalry;

That said Hardy was released from said prison about the latter part of February, 1901, or the 1st day of March, 1901;

That while the said Hardy was confined in said prison he went by the name of "Diamond Dick," a name which was given to him by reason of the fact that he was continuously reading dime novels.

MARTIN TRICKER.

Subscribed and sworn to before me this 2nd day of September, 1901.

JOHN T. REED,
Deputy Clerk U. S. District Court,
District of Alaska, Second Division.

15 In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY. } Affidavit of Frank W. Lee.

I, FRANK W. LEE, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one years;

That I am acquainted with the above-named defendant, Fred Hardy, and have been since the month of August, 1900;

That during the years 1898, 1899, and 1900 I was a soldier in the United States Army, doing service in the Philippine Islands;

That during the month of July, 1900, I was sentenced by a military court held in the Philippine Islands to one year's term of imprisonment at Alcatraz military prison, San Francisco;

That I left the Philippine Islands for said military prison during the month of July, 1900, and arrived at said military prison the latter part of August, 1900;

That when I arrived at said military prison the above-named defendant, Fred Hardy, was confined in said prison as a military prisoner;

That from the time of my arrival at the said military prison up to the time of the said Hardy's discharge, which was either the latter part of February or early in March, 1901, I saw the said defendant in said prison every day;

That said Hardy was known by the appellation of "Diamond Dick," a name that was given to him in said prison on account of his continually reading dime novels.

FRANK W. LEE.

Subscribed and sworn to before me this 2nd day of September, 1901.

JOHN T. REED,
Deputy Clerk U. S. District Court,
District of Alaska, Second Division.

16 In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY. } Affidavit of Wm. C. Bowen.

I, WILLIAM C. BOWEN, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one years,

and at present am employed on the United States steam revenue cutter "Manning" in the capacity of ordinary seaman;

That I am acquainted with the above-named defendant, Hardy, and have been since about October, 1900;

That at that time I was confined in Alcatraz military prison, San Francisco, on a charge of assault and battery, and serving a sentence of one year;

That during the month of October, 1900, I saw the defendant, Fred Hardy, confined in said Alcatraz prison as a prisoner;

That from the month of October, 1900, until the 4th day of February, 1901, when I was discharged from said military prison by virtue of the expiration of my said sentence, the defendant, Hardy, was a prisoner in said prison, and during said time I saw him almost daily;

That when I left said prison on the 4th day of February, 1901, the said Hardy was still confined in said prison;

That the said Hardy was suffering imprisonment by virtue of the judgment of a court martial rendered against him in the Philippine Islands;

That it is the rule and custom that when a soldier is sentenced to Alcatraz Island that it works a forfeiture of all money due him from the Government;

That after my discharge from said military prison, to wit, about the middle of March, 1901, up to the second day of April, 1901, I saw the defendant Hardy hanging and lounging around Al. White's saloon at the Presidio, San Francisco, California.

WILLIAM C. BOWEN.

Subscribed and sworn to before me this 2nd day of September, 1901.

JOHN T. REED,
Deputy U. S. District Court,
District of Alaska, Second Division.

17 In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY. } Affidavit of Charles Schoemer.

I, CHARLES SCHOEMER, being first duly sworn, depose and say, that I am a citizen of the United States, over the age of twenty-one years, and at present am employed as bugler on the United States steam revenue cutter "Manning;"

That I have been such since the second day of April, 1901;

That during the years of 1898 and up to the 12th day of July, 1899, I was a soldier in the 18th Regiment of the United States Infantry;

That on or about the 1st day of May, 1899, I was at that time stationed with my regiment at Illioilo, Philippine Islands, and about that time became acquainted with the above-named defendant, Fred Hardy, who was at that time and up to the 12th day of July, 1899, to my knowledge, a private soldier of the First Tennessee Volunteer Infantry.

CHARLES SCHOEMER.

Subscribed and sworn to before me this 2nd day of September, 1901.

H. G. STEEL,
Clerk of the Court,
By JOHN T. REED, *Deputy.*

18 In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY.
} Affidavit of J. C. Scott.

I, J. C. SCOTT, being first duly sworn, depose and say, that I am a citizen of the United States, over the age of twenty-one years;

That on the 7th day of June, 1901, and for some days prior thereto, I, with a party of seven prospectors, was located at Otter Cove, on the west shore of Unimack Island;

That on said 7th day of June, 1901, one George Aston arrived at our camp and stated that he was a fisherman from the ship "Arago" and that owing to a storm he had been blown ashore;

That the said Aston had at said time a dory and a complete fishing outfit, but was without provisions of any kind;

That the said Aston remained with our party continuously from the 7th day of June, 1901, to the 20th day of June of the said year;

That on the night of the 17th day of June, 1901, Fred Hardy, the above-named defendant, came to our camp at Otter Cove and asked for something to eat, stating that he had had nothing to eat for five days; that the said Hardy carried at said time a 30-30 Marlin rifle and revolvers;

That the said Hardy told us that he was a fisherman from the fishing schooner "Arago," and that some time prior to the 17th day of June, 1901, he, with a person by the name of "Charley," had came ashore for the purpose of hunting for bear; that the captain of the "Arago" had given him a rifle; that he and his companion, "Charley," had
19 gone back into the mountains in search of bear, and when they returned they found that the dory had returned to the schooner; that they then began to make a search for quarters to spend the night, when they ran across a cabin that had a sign on it "Sailors' Home" and also a notice to the effect that the within cabin contained goods and provisions, the property of the "Arago" people, and that any wrecked or lost sailors were privileged to enter and take what provisions they needed;

That he, Hardy, and his companion entered the cabin and found upon the bed the skeleton of a man; that said skeleton bore evidence of the flesh having been gnawed off by rats;

That he and his companion took the skeleton and buried it, and went back to the cabin, cooked a meal, and laid some blankets which they found in the cabin on the floor for a bed, preparatory to staying for the night;

That he and his companion laid down on said blankets for sleep, and that during the night his partner got up and left the cabin, and that was the last he ever saw of him;

That this cabin contained provisions and clothing, blankets and ammunition;

That the said Hardy showed to him a roll of greenbacks, stating that he had twelve hundred ($1,200.00) dollars; that it was money that he had received when he was mustered out of the military service of the United States;

That he, Hardy, had been a lieutenant in the United States Army;

That Hardy remained with us on the night of the 19th, and on the following day, accompanied by George Aston, left our camp for the purpose of going to the place where he said these goods were.

JAS. C. SCOTT.

Subscribed and sworn to before me this 2nd day of September, 1901.

JOHN T. REED,
Deputy Clerk U. S. District Court,
District of Alaska, Second Division.

20 In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY.
} Affidavit of John T. Reed.

I, JOHN T. REED, being first duly sworn, depose and say, that I am a citizen of the United States, a resident of the district of Alaska, and a deputy clerk in the United States district court for the second division thereof;

That as said clerk I was in attendance at the special term of said court held at Unalaska on the 24th day of August, 1901, when the defendant, Fred Hardy, pleaded to the indictment against him in the above-entitled cause;

That at the said time the defendant appeared personally, and by his attorney, John W. Corson; that immediately after the defendant had entered his plea in the above-entitled cause, John L. McGinn, assistant United States attorney, notified the defendant and his attorney in open court that he was about to proceed to Unimack Island for the purpose of procuring evidence in the above-entitled cause, and notified the defendant and his attorney that if they had any witnesses that they desired to obtain from said island, or from other places, to cause subpœnas to be issued at once and placed in the hands of the marshal for service;

That at said time his attorney, Mr. Corson, filed an affidavit stating that Captain Mackintosh, of the fishing schooner "Arago," was a material witness for the defense, and asked for an order directing that a subpœna be issued for the said Mackintosh, which said order was duly granted and said subpœna issued.

21 That at said time the above-named defendant or his attorney did not make any request for a subpœna for , John Johnson, or for any person on board the United States Government boat "Pathfinder," or for Major Whitney, or for any other person;

That since said time, and up to the time of the filing of a motion for a continuance in the above-entitled cause, to wit, on September 2nd, 1901, the defendant, or his attorney, has never requested that any subpœnas be

issued for any person save and except Captain Mackintosh, as aforesaid, and one Frank Weber, on Aug. 30, 1901.

JOHN T. REED.

Sworn and subscribed to before me this 2nd day of September, 1901.

R. H. WHIPPLE,
U. S. Commissioner for the District of Alaska,
Second Division, Dutch Harbor Precinct.

22 In the district court of the United States for the district of Alaska, second division.

THE UNITED STATES OF AMERICA }
vs.
FRED HARDY. }

I, CECIL W. NEWTON, being first duly sworn, depose and say: That I am a resident of the district of Alaska, and a citizen of the United States, over the age of twenty-one years;

That during the month of June, 1901, I was camped at "Otter Cove," being a member of a party known as "Scott's party;"

That I was present at Scott's camp on the evening of the 17th day of June, 1901, when the defendant, Fred Hardy, came to the camp asking for food;

That on the following day I was present at a general conversation that took place at said camp, when the defendant, Fred Hardy, stated among other things that he left the said schooner "Arago" on the day following the day that George Aston left the same.

CECIL W. NEWTON.

Subscribed and sworn to before me this 3rd day of September, 1901.

JOHN T. REED,
Deputy Clerk of said Court.

23 In the district court of the United States for the district of Alaska, second division.

THE UNITED STATES OF AMERICA }
vs.
FRED HARDY. }

I, J. C. SCOTT, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of 21 years.

That I am the same person who made an affidavit heretofore in the above-entitled cause, and make the following statement supplemental to the affidavit heretofore made by me:

That on the morning of the 18th day of June, 1901, in a general conversation that took place at our camp, I being present, the above-named defendant, Fred Hardy, stated that he left the fishing schooner "Arago" on the day following the day that George Aston left said schooner "Arago."

JAS. C. SCOTT.

Subscribed and sworn to before me this 3rd day of September, 1901.

JOHN T. REED,
Deputy Clerk U. S. District Court,
District of Alaska, Second Division.

In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY.
} Affidavit of George H. Aston.

I, GEORGE H. ASTON, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one years;

That about the middle of April, 1901, he left San Francisco, California, on the fishing schooner "Arago" for Bering waters;

That on said boat, as a fisherman, was the above-named defendant, Fred Hardy;

That on Sunday, the second day of June, 1901, I left the "Arago" in my boat for the purpose of fishing, but a storm coming up I was unable to return to said boat and was in my boat at sea during the night of June 2nd and until the afternoon of June 3rd;

That on the afternoon of June 3rd I reached the shore of Unimack Island, near False Pass, and was met by a native who assisted me in landing my boat and who brought me to his camping place, gave me food, and allowed me to remain with him on the nights of the 3rd and 4th of June of this year;

That on the 5th day of June the natives broke camp and I went to Marchove and there met one Charley Rosenberg, and remained with him on the nights of the 5th and 6th days of June, 1901;

That on the 7th day of June, 1901, I arrived at Scott's camp at Otter Cove and remained with the Scott party continuously from the 7th day of June until the 20th day of June, 1901;

That on the 20th day of June I returned from Lazareef, where I had gone with Mr. Collinwood, one of Scott's party, for the purpose
25 of getting provisions, and found on my return that the above-named defendant, Fred Hardy, was at the camp.

I had a conversation with Hardy that night and I asked him when he left the "Arago," and he said, "three or four days after you did;" he then told me that he had come ashore with a watering party and that he and a fisherman by the name of Charley had gone back into the mountains for the purpose of hunting for bear.

That they returned to the boat when he, Hardy, made a pretext that he had lost his glove and went to search for it; that when he returned the boat was gone.

He then told me that the story that he had told Mr. Scott about finding these goods in a cabin and about finding a dead man was untrue; that he had found the goods in a tent.

He showed me at this time a roll of paper money which he said amounted to twelve hundred dollars ($1,200.00) and made the remark, "You know this is more money than I had when I was aboard the 'Arago.'"

He told me that he did not want a man by the name of Smedley, who was cook for the Scott party, to accompany him to where these goods were, for the reason that he had told Smedley and others that the goods were in a cabin, and as they were not in a cabin, but in a tent, that it

might create some suspicion, and he urged me to go to Mr. Scott and ask him not to allow Smedley to accompany us to the place where the goods were.

Hardy told me that we would go to where the goods were and get a sufficient amount of clothing and provisions to enable us to get off the island and go to some place in civilization, and that we would then open up a saloon.

I agreed to go with Hardy upon this trip, but not without first asking Mr. Scott if it would be all right to take these provisions, and Mr.
26 Scott told me that it would be all right, provided that if anybody at any time made any claim to them that we should reimburse them for what we had taken.

On the morning of the 20th of June, 1901, Hardy and I left Scott's camp for the place where he said the goods were located.

That on the date aforesaid, in our dory, about three or four miles from Scott's camp, said Hardy took from his pocket three gold watches, one of them bearing the inscription "From Florance to Julia," or "From Julia to Florance." I asked him where he had gotten these watches and he told me not to be particular and not to ask too many questions. He also told me that the rifle he had with him was given to him by the captain of the "Arago" when he came ashore.

Hardy subsequently told me a different story, to the effect that when the party arrived upon the beach to get water, that they saw a tent standing upon the beach near a small creek; that while they were still quite a little distance from the shore, they heard the reports of guns and saw three men rush out of the tent and go in different directions. That when they arrived at the tent they found everything in disordered condition. That a .44 Colt revolver that he had with him he found immediately in front of the tent.

That there was some whiskey there and that he and the mate drank some of it. That they also found fresh bread and that there was in the tent plenty of provisions, blankets, clothing, ammunition, and reloading tools. That he and the mate went to hunt for foxes and that he left the mate on the pretext that he had lost his glove. That when he returned the boat was gone. That he stayed in this tent three or four days, after removed the goods three or four miles to the eastward and remained there 3 or 4 days, and then proceeded to Scott's camp.

G. H. ASTON.

Subscribed and sworn to before me this 2nd day of September, 1901.

JOHN T. REED,
Deputy Clerk U. S. District Court,
District of Alaska, Second Division.

27 Thereupon the defendant filed the following affidavit in reply to the affidavits filed by the United States of America:

In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY.

UNITED STATES OF AMERICA,
Unalaska, Alaska, ss.

Defendant, Fred Hardy, being first duly sworn, says that he never at any time was confined in the Alcatraz prison as a prisoner or otherwise, and denies and says that he was not a prisoner in said prison or in any other prison. Affiant further deposes and denies that he ever suffered any imprisonment by virtue of a judgment of any court-martial, or any other body or authority, or at all.

FRED HARDY.

Subscribed and sworn to before me this 2nd day of September, 1901.

JOHN T. REED,
Deputy Clerk U. S. District Court,
District of Alaska, Second Division.

28 All of said affidavits were duly considered by the court, and after argument by counsel, the motion for a continuance was overruled, to which ruling of the court the defendant excepted.

Thereafter, and on the 2nd day of September, 1901, and continuing on the 3rd, 4th, 5th, 6th, and 7th days of September, 1901, the cause was tried, during the whole of said proceedings the United States being represented by John L. McGinn, assistant United States district attorney for the district of Alaska, second division, and the defendant appearing by his attorneys, Mr. John W. Corson and Mr. P. C. Sullivan, the defendant being personally present at all proceedings in the trial of said cause.

Thereupon the following proceedings were had and done, to wit:

29 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA
vs.
FRED HARDY. } Charged with murder.

This cause coming on regularly for trial in the above-entitled court, before the Honorable James Wickersham, judge of said court, sitting with a jury, beginning on the 2nd day of September and continuing on the 3rd, 4th, 5th, 6th, and 7th days of said month, 1901; the United States represented by John L. McGinn, esq., ass't U. S. district attorney, and the defendant appearing in person and with his counsel, Mr. P. C. Sullivan and John W. Corson, esq.

Thereupon the following proceedings were had and done, to wit:

30 Mr. GEO. R. BOURETT, called as a juror, and having been duly sworn to answer questions, testified as follows:

Q. (By Mr. SULLIVAN.) Mr. Bourett, where do you live?

A. My home is in Nome.

Q. How long have you been there?

A. A little over a year and three months. I arrived there about the middle of June, a year ago.

Q. Where did you live before you went to Nome?

A. About a year and a half in Portland, Oregon.

Q. What has been your occupation?

A. In Nome I have a meat market.

Q. Have you ever been a United States marshal, a deputy sheriff, or peace officer of any kind?

A. No; I have not.

Q. Do you still reside in Nome?

A. Yes, sir.

Q. Do you intend to return there at the expiration of this court?

A. It all depends on how long we remain here. I may go to the outside.

Q. Were you acquainted with Mr. McGinn?

A. Not before I came here.

Q. Do you know Mr. Jos. K. Wood, U. S. district attorney?

A. Only by sight; not personally.

Q. Do you know this defendant?

A. No; I am not acquainted with the defendant.

Q. Were you at any time acquainted with one Con. Sullivan?

A. Not that I know of. The name is familiar, but I do not remember anyone of that name.

31 Q. You have heard of the fact of the alleged killing of one Con. Sullivan, and of one Florence Sullivan, and one P. J. Rooney, on Unimack Island, have you not?

A. Yes, sir.

Q. Are you acquainted with any of these parties?

A. Not to my knowledge.

Q. Do you know any person, or have you talked with any person who is supposed to be acquainted with them?

A. Not that I know of.

Q. Did you read an account of the commission of the alleged offense in the Nome newspapers, or in the Seattle papers in Nome?

A. I just read the heading; I did not read a detailed account.

Q. When was that?

A. I think it was on Sunday when the papers came to Nome. I merely glanced at the headline.

Q. Did you hear anyone in Nome undertake to state the alleged facts connected with the alleged crime?

A. No, sir; only perhaps a remark or two; no detailed statement that I would consider authentic at all; nothing that would create an opinion in my mind.

Q. Did these remarks have any probability as to who committed the alleged crime?

A. No, nothing; the remarks were not at all important.

Q. After you arrived at Unalaska, or Dutch Harbor, have you heard any discussion of this alleged crime?

A. Very little. I have talked to no one about it to speak of, and I have had no one speak to me in regard to it.

32 Q. Has anyone here or at Dutch Harbor undertaken to report to you what alleged to be the facts in the case?

A. No, not that I can recollect; there has been occasional comment but no one has gone into detail. I have heard remarks, but no detailed account.

Q. From what you have heard did you form any impression or form any opinion as to the guilt or innocence of this defendant?

A. I can not say that I formed an opinion; no.

Q. Did you have or at the present time have you any opinion whatever?

A. No; I have not heard enough of the details to form an opinion.

Q. Do you think you could try this case on the evidence introduced at the trial?

A. I think I could; yes.

Q. Are you conscious of any bias feeling, or sentiment of any kind, that would prejudice your mind in the trial of the case?

A. I am not aware of any bias or prejudice; nothing more than what I have heard in the court room this morning.

Q. You mean by the reading of the affidavits?

A. Yes, sir.

Q. I will ask you, did you form an opinion from what you heard in the court room this morning?

A. No; I did not.

Mr. SULLIVAN: Pass the juror for cause.

(By Mr. MCGINN:) Mr. Bourett, you state that you resided in Portland, Oregon, for a period of a year and a half?

A. Not quite that long.

33 Q. You were engaged in the butcher business there?

A. Yes, sir.

Q. Where is your native State?

A. Michigan.

Q. You stated that you were not acquainted with the defendant?

A. No.

Q. Are you acquainted with Mr. Sullivan?

A. No; I am not.

Q. Are you acquainted with Mr. Corson?

A. No; I am not.

Q. Did you know Mr. Sullivan in Nome?

A. Only by sight.

Q. Did you ever have any business dealings with him?

A. No, sir.

Q. Did you know Mr. Corson in Nome?

A. Only by sight.

Q. Did you ever have any business relations with him?

A. No, sir.

Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?

A. I would have to be very certain.

Q. Have you any such conscientious scruples or opinions as will prevent or preclude you from rendering a verdict of guilty in a case on circumstantial evidence where the penalty prescribed by law is that of death?

A. No, not if the evidence were strong enough; I think that if I was reasonably sure I think that I would have no compunction at all.

34 Q. You feel that if the evidence were such that it would satisfy your mind you would render a verdict of death?

A. If I was positively certain; yes.

Q. Could you render a verdict if you were satisfied beyond a reasonable doubt?

A. Yes, sir.

Q. You do not know anything about this case except what you have heard around Dutch Harbor since you have been here?

A. That is all I know.

Q. Have you ever read any newspaper accounts of this case?

A. I only saw the first account that came out when the news first came to Nome.

Q. You have then at this time no bias or opinion one way or the other as regards the guilt or innocence of the defendant?

A. No, sir.

(Mr. McGINN:) We pass the juror for cause.

Mr. A. J. KELSEY, called as a juror, and having been duly sworn to answer questions, testified as follows:

Q. (By Mr. SULLIVAN:) Mr. Kelsey, where do you reside?

A. At the present time at Unalaska.

Q. Where did you reside before?

A. At Nome.

Q. Have you taken up your residence at Unalaska?

A. No, sir.

35 Q. How long have you been in Nome?

A. Since September, 1899.

Q. Do you intend to return to Nome when you get through court here?

A. Yes, sir.

Q. You came on the "St. Paul," did you not?

A. Yes, sir.

Q. Where did you live prior to the time that you went to Nome?

A. At Dawson.

Q. A miner by occupation?

A. Yes, sir.

Q. Where were you residing prior to the time that you went to Dawson?

A. At Eagle.

Q. How long have you been in Alaska?

A. Since '97.

Q. What is your native State?

A. Ohio.

Q. What was your occupation before you came to Dawson?
A. Mining.
Q. At what place in Ohio were you born?
A. Cincinnati.
Q. Have you at any time held the position of sheriff, deputy marshal, or been a peace officer of any kind?
A. No, sir.
Q. Are you acquainted with Mr. McGinn, assist. U. S. district att'y?
A. By sight.
36 Q. Were you acquainted with him at Nome?
A. By sight.
Q. Are you acquainted with Mr. Jos. K. Wood, U. S. district att'y?
A. By sight.
Q. Did he ever act as attorney for you in any capacity?
A. No, sir.
Q. Do you know of the circumstance that it is claimed that one Con Sullivan, one Florence Sullivan, and one Rooney were killed sometime since on Unimack Island?
A. I do not know much about it.
Q. Did you know any of these parties?
A. No, sir.
Q. Have you ever heard anything that purported to be the facts stated by anyone?
A. No, sir.
Q. Did you see any account while you were in Nome of this alleged crime?
A. No, sir.
Q. You did not read the Nome papers?
A. No, sir.
Q. Did you hear any comment of any kind from anyone in regard to it before you left there?
A. No, sir.
Q. Never heard of the case at all?
A. No, sir.
Q. Since you left Nome have you heard of the alleged crime?
A. No, sir.
37 Q. Have you heard anything said about it around Unalaska or Dutch Harbor?
A. No, sir.
Q. Have you heard it mentioned?
A. A casual comment is all.
Q. Did you hear any comment that created any impression or feeling or sentiment on your mind?
A. No, sir.
Q. Have you at the present time any impression or opinion as to the guilt or innocence of the defendant?
A. None whatever.
Q. Do you think you could take this case and try it under the law as given to you by the court and the evidence upon the hearing and render a fair and impartial verdict?
A. Yes, sir.

Q. You are not con'cious of any bias or prejudice of any kind?
A. No, sir.
Mr. SULLIVAN. Pass the juror for cause.
Q. (By Mr. McGINN:) Mr. Kelsey, what is your business?
A. Mining.
Q. How long have you resided in Alaska?
A. Since '97.
Q. Done considerable prospecting work?
A. Yes, sir.
Q. Where did you live prior to coming to Alaska?
A. California.
Q. What is your native State?
A. Ohio.
38 Q. Are you acquainted with the defendant?
A. No, sir.
Q. Are you acquainted with Mr. Sullivan, his attorney?
A. Only by sight.
Q. Did you know him in Nome?
A. By sight.
Q. Did you ever have any business relations with him?
A. No, sir.
Q. Are you acquainted with Mr. Corson?
A. No, sir.
Q. Did you ever have any business dealings with him?
A. No, sir.
Q. Were you acquainted with Con Sullivan, Florence Sullivan, P. J. Rooney, or Owen Jackson?
A. With Owen Jackson, just by sight, since I have been in Unalaska.
Q. Have you read any newspaper accounts about this case?
A. No, sir.
Q. Have you ever heard the facts in the case narrated by anyone who is acquainted with the facts?
A. No, sir.
Q. Have you talked with any of the witnesses?
A. No, sir.
Q. Have you any opinion at this time in regard to the merits of this case?
A. No, sir.
Q. If accepted as a juror you could try the case fairly and impartially upon the evidence as introduced at the trial and the law as given to you by the court?
A. Yes, sir.
39 Q. Have you any such conscientious scruples or opinions as will prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?
A. No, sir.
Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case on circumstantial evidence where the penalty prescribed by law is that of death?
A. No, sir.
Mr. McGINN: Pass the juror for cause.

Mr. J. A. ELLIS, called as a juror, and having been duly sworn to answer questions, testified as follows:

(By Mr. SULLIVAN.) Mr. Ellis, this is the case of the United States against Fred Hardy, charged with the crime of murder, alleged to have been committed by the killing of one Con Sullivan at Unimack Island in June of this year.

Q. Where do you reside?

A. In Nome.

Q. How long have you lived there?

A. Since '99.

Q. What has been your occupation?

A. Carpenter; with the exception of three or four months I was not in Nome.

Q. Where did you come from when you first went to Nome?

A. Beverly, Mass.

40 Q. Are you acquainted with Mr. McGinn, ass't U. S. district att'y?

A. Only by sight.

Q. Are you acquainted with Mr. Jos. K. Wood, U. S. district att'y?

A. No, sir.

Q. Did either one of them ever do any business for you?

A. No, sir.

Q. Have you ever at any time been a deputy marshal, sheriff, or peace officer of any kind?

A. About twelve years ago I was a special police in Walden, Mass., for about three months.

Q. Were you acquainted with P. J. Rooney, Florence Sullivan, or Con Sullivan?

A. No, sir.

Q. Do you know Owen Jackson, one of the prosecuting witnesses in this case?

A. No, sir.

Q. Are you acquainted with one George Aston?

A. Not to my knowledge.

Q. I will ask you, before leaving Nome, have you heard anything in regard to this alleged crime?

A. No, sir.

Q. Did you read any of the newspapers containing an account of it?

A. No, sir.

Q. You came here on the "St. Paul," on the 19th?

A. Yes, sir.

Q. Since you arrived at Unalaska, have you heard the alleged

41 facts discussed?

A. No, sir.

Q. Heard it mentioned at all?

A. No, sir.

Q. From what you have heard said in regard to it, did that create any impression upon your mind as to the guilt or innocence of this defendant?

A. No, sir.

Q. Are you conscious of any bias or prejudice or sentiment of any kind

that would prevent you trying the case fairly and impartially upon the law and the evidence?

A. No, sir.

Mr. SULLIVAN. Pass the juror for cause.

Q. (By Mr. McGINN.) Mr. Ellis, you say that you have resided in Nome since '99?

A. With the exception of a few months.

Q. Where was your home prior to coming to Nome?

A. Beverly, Mass. Maine is my native State.

Q. Are you acquainted with the defendant Hardy?

A. No, sir.

Q. Were you a soldier during the Spanish-American war?

A. No, sir.

Q. Are you acquainted with Mr. Sullivan?

A. By sight.

Q. Were you acquainted with him at Nome?

A. No, sir.

Q. Are you acquainted with Mr. Corson?

42 A. No, sir.

Q. Never had any business dealings with either of these gentlemen?

A. No, sir; I met them at Unalaska.

Q. Have you ever read any newspaper account of this case?

A. No, sir.

Q. In papers from the outside?

A. No, sir.

Q. Never discussed the facts with anybody?

A. No, sir.

Q. Never heard the facts narrated by anyone?

A. No, sir.

Q. Were you acquainted with Con Sullivan, Florence Sullivan, or P. J. Rooney during their lifetime?

A. No, sir.

Q. Are you conscious of any conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?

A. No, sir.

Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty where the penalty prescribed by law is that of death in a case of circumstantial evidence?

A. Not when the circumstantial evidence convinces me beyond a reasonable doubt.

Q. You then have at this time, Mr. Ellis, no bias or opinion one way or the other in regard to the merits of this case?

A. No, sir.

43 Q. And you feel that if you were sworn and accepted you could try the case fairly and impartially?

A. Yes, sir.

Q. Do you feel that you can try the case upon the law and the evidence as it shall be adduced upon the trial?

A. Yes, sir.

Mr. McGINN. We pass the juror for cause.

Mr. E. T. BALDWIN, called as a juror, and having been duly sworn to answer questions, testified as follows:

Q. (By Mr. SULLIVAN.) Mr. Baldwin, you know what this case is?
A. Yes, sir.
Q. Where do you reside?
A. In Nome.
Q. How long have you resided there?
A. Since '99.
Q. What has been your business, Mr. Baldwin?
A. I was in the mercantile business.
Q. Where did you reside before you went to Nome?
A. Dutch Harbor.
Q. How long did you reside at Dutch Harbor prior to going to Nome?
A. About six years.
Q. What was your business at Dutch Harbor?
A. I was in charge of the N. C. Company's station there.
Q. The same company that is located there now?
A. Yes, sir.
Q. You mean that you were manager of the business there?
44 A. Yes, sir.
Q. Were you acquainted generally with the present officers of the company there and the people of Dutch Harbor and Unalaska?
A. Yes, sir.
Q. Are you acquainted with Mr. McGinn, assistant U. S. district att'y?
A. Slightly.
Q. Do you know Mr. Jos. K. Wood?
A. About the same.
Q. Did either of them ever transact any legal business for you?
A. No, sir.
Q. Have you ever been a marshal, sheriff, police officer, or any officer of that kind?
A. No, sir; nothing of that kind.
Q. Did you read any account of what purported to be an account of this crime in the newspapers at Nome?
A. I read an account in one of the papers at the time that the crime was first published.
Q. Did you hear any comments in Nome about the facts?
A. No, sir; nothing material.
Q. What you saw in the paper, did that contain a statement of the facts? Did it purport to give the names of the persons who it was supposed committed the crime?
A. No, sir. If I remember right the statement came out before anyone was arrested.
Q. Have you formed any impression from anything you read in Nome as to the guilt or innocence of any party?
A. No, sir.
45 Q. Did you come on the "St. Paul" to Unalaska?
A. Yes, sir.
Q. Since your arrival at Unalaska have you heard anything said about this case?
A. No, sir; nothing special. Being on the jury I thought I might be called on the case, and I have avoided all talk in the matter.

Q. Have you heard it mentioned at all?
A. Just heard it mentioned along with other matters.
Q. Heard any statements of fact? Has any person charged the crime to any particular person?
A. No, sir; what remarks I have heard have been just passing remarks.
Q. Have you any impression or opinion of any kind as to the guilt or innocence of this defendant?
A. No, sir; I have no reason to form any.
Q. You are not conscious of any bias of any kind?
A. No, sir.
Q. Do you think you could take this case and try it upon the law as given you by the court and the evidence adduced at the trial?
A. I do.
Q. Were you acquainted at any time with P. J. Rooney or Florence Sullivan or Con Sullivan?
A. No, sir.
Q. Are you acquainted with Owen Jackson?
A. No, sir.
46 Q. Mr. Jackson was one of the witnesses at the preliminary examination of this trial; you do not know whether you have heard him make any remarks about the trial or not?
A. No, sir; I did not know there was such a man in the case.
Q. Mr. Baldwin, are you acquainted with the officers of the United States Government ship "Manning"?
A. Some of them.
Q. Quite well acquainted with them?
A. I am quite well acquainted with the captain.
Q. Would the fact that they are taking any interest in this case have any effect upon your mind as a juror?
A. No, sir.
Q. Would you be willing to be, if you were on trial for an offense of this kind; would you be willing to be tried by a juror in the same state of mind that you are now?
A. Yes, sir.
Q. You feel certain that nothing would influence your mind except the law as given by the court and the evidence given in the court room?
A. No, sir.
Mr. SULLIVAN. We pass the juror for cause.
Q. (By Mr. MCGINN.) You say that you are not acquainted with the defendant?
A. No, sir.
Q. What State are you from?
A. I came from Omaha here; lived there about 15 years. I
47 am a Vermonter by birth.
Q. Are you acquainted with Mr. Sullivan, the attorney?
A. I have seen more of him here than anywhere before. I have known him by sight for about a year.
Q. Have you ever had any business relations with him?
A. No, sir.
Q. Are you acquainted with Mr. Corson?
A. No, sir.

Q. Did you ever have any business relations with him?
A. No, sir.
Q. You stated that you read a newspaper account of this killing?
A. Yes, sir.
Q. Do you know whether it was a paper published in Alaska or on the outside?
A. It was one of the Nome newspapers; I think it was an extra that was gotten out.
Q. From what you read in the papers did you form an opinion?
A. No, sir; it was merely a statement of the killing and the finding of the bodies.
Q. You know nothing about the merits of the case at this time?
A. No, sir.
Q. You think that if you were sworn as a juror you could try this case fairly and impartially?
A. Yes, sir.
Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?
48 A. No, sir.
Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death, on circumstantial evidence?
A. No, sir; not if it was what I call good circumstantial evidence. Plain evidence, even if it were circumstantial, I would be satisfied.
Mr. McGINN. We pass the juror for cause.

Mr. J. H. KEHOE, called as a juror, and having been duly sworn to answer questions, testified as follows:
Q. (By Mr. SULLIVAN.) Mr. Kehoe, where do you reside?
A. In Nome.
Q. How long have you resided there?
A. Since '99.
Q. Where did you live before you went to Nome?
A. Minneapolis, Minn.; that is, of course, I was up in Alaska for two years before I went to Nome. I have been in Alaska a little over three years.
Q. Did you come to Dutch Harbor on the "St. Paul"?
A. Yes, sir.
Q. Are you acquainted with Mr. McGinn?
A. Yes, sir; slightly.
Q. Are you acquainted with Mr. Jos. K. Wood, U. S. district atty.?
A. Yes, sir; about the same.
49 Q. Did he ever do any legal or other business for you?
A. No, sir.
Q. Were you ever acquainted with Florence Sullivan or Con Sullivan or P. J. Rooney?
A. I think not.
Q. Do you know Owen Jackson, a witness in this case?
A. I think not.

Q. While you were in Nome, did you hear or read anything about this alleged offense?

A. I think I saw something of it in one of the Nome papers.

Q. Did you hear anyone discuss it?

A. No, sir.

Q. Did you form any opinion, from what you read, in regard to this matter?

A. I may have formed a slight opinion; yes, sir.

Q. Is that opinion such as it would require evidence to remove?

A. Yes; I think it would.

Q. After coming to Unalaska, have you heard anything of the case here at Unalaska or Dutch Harbor?

A. I have heard more or less of it.

Q. From what you heard here, did it form any impression upon your mind?

A. Taking that and everything together I have formed some little opinion of it.

Q. You still have that opinion?

A. I still have some opinion; yes.

50 Q. You would go into the jury box, if you sit in the trial of the case, with an opinion as to the merits of the case?

A. Yes, sir.

Mr. SULLIVAN. We challenge the juror for cause.

Q. (By Mr. McGINN.) Mr. Kehoe, have you read any account in the papers in regard to this case?

A. I read an account in the Nome papers.

Q. Did you read any account in any of the outside papers in regard to this case?

A. No, sir.

Q. Was the report that you read in the paper such a report that it purported to be the facts in the case?

A. I could not say; I do not think it was the facts.

Q. Have you ever discussed this case with any person?

A. No, sir.

Q. Did you ever discuss the case with any person who claimed to be a witness in the case?

A. No, sir.

Q. You have formed the opinion that you now have from rumor more than anything else?

A. Yes, sir.

Q. Do you feel that you could disregard that opinion and try the case solely from the evidence that is adduced from the evidence and the instructions given to you by the court?

A. Yes, sir.

51 Q. (By Mr. SULLIVAN.) Mr. Kehoe, would you be willing to be tried upon a similar charge and have a person sitting upon the jury who is in the condition in regard to an opinion that you are in now?

A. No, sir.

Q. You would not consider such a juror an impartial juror?

Mr. McGINN. We object to that question.

Mr. SULLIVAN. We withdraw the question.

Q. (The COURT.) Mr. Kehoe, if it appeared that the juror that you mention now did not talk with any witnesses who purported to know the facts and that he knew nothing of the facts and the juror said that he would disregard that opinion and that he could try the case fairly and impartially upon the evidence and the law given to him by the court, do you think that you would be willing to be tried by such a juror?

A. Yes, sir.

The COURT. Challenge denied.

Mr. SULLIVAN. Defendant excepts.

Q. (By Mr. MCGINN.) Mr. Kehoe, you have resided in Alaska since '98?

A. Yes, sir.

Q. Are you acquainted with the defendant, Fred Hardy?

A. No, sir.

Q. Are you acquainted with Mr. Sullivan, his attorney?

A. Yes, sir; slightly.

Q. You knew him in Nome?

52 A. Yes, sir.

Q. Did you ever have any business dealings with him?

A. No, sir.

Q. Are you acquainted with Mr. Corson?

A. Slightly.

Q. Did you ever have any business dealings with him?

A. No, sir.

Q. Have you any such conscientious scruples or opinions as would preclude you from rendering a verdict of guilty in a case when the penalty prescribed by law is that of death?

A. I do not think so.

Q. Do you feel that you could render such a verdict on circumstantial evidence?

A. No, sir. I have conscientious scruples as regards to murder where the penalty is that of death on circumstantial evidence.

Q. (By Mr. SULLIVAN). Mr. Kehoe, supposing that the law is that both on circumstantial and direct evidence that the juror must be satisfied beyond a reasonable doubt of the guilt of the defendant based upon the evidence in the case, and if the evidence should satisfy you beyond a reasonable doubt that the person was guilty, would you have conscientious scruples on circumstantial evidence?

A. I do not think I would make a good juror in a case of this kind.

Q. Do you think that you could disregard any feeling or sentiment that you may have and follow the instructions of the court?

A. I certainly would do that as far as I could.

53 Q. Do you belong to any society or church of any denomination whereby you have taken any oath or agreed not to find a man guilty of capital punishment?

A. No, sir.

Mr. SULLIVAN. We deny the challenge.

The COURT. Challenge found true.

Mr. SULLIVAN. Defendant excepts.

The COURT. Mr. Kehoe, you may be excused from further service as a juror during this term of court.

JAS. SMILIE, called as a juror, and having been duly sworn to answer questions, testified as follows:

Q. (By Mr. SULLIVAN). Mr. Smilie, where do you reside?
A. In Nome.
Q. How long have you resided there?
A. Since June, 1900.
Q. Where did you live before coming to Nome?
A. In Oakland, California.
Q. How long have you lived in Oakland?
A. About six years.
Q. What was your occupation there?
A. I went to school and then was a dry goods salesman.
Q. What has been your occupation in Nome?
A. A salesman.
Q. You know what this case is about?
A. I have heard it stated.
54 Q. Were you ever at any time acquainted with one P. J. Rooney, one Con Sullivan or Florence Sullivan?
A. No, sir.
Q. Are you acquainted with Owen Jackson, who is here at Unalaska at present?
A. I know him by sight.
Q. Are you acquainted with Mr. McGinn?
A. By sight only.
Q. Are you acquainted with Mr. Wood, U. S. district attorney?
A. By sight only.
Q. Did they, or either of them, ever transact any legal or other business for you?
A. No, sir.
Q. While you were in Nome did you ever read any account or see any account of this crime?
A. A brief account in one of the Nome papers.
Q. Did that account give a history of the case?
A. Just a brief account of it. I did not pay much attention to it.
Q. Did that create any impression or opinion in your mind?
A. No, sir.
Q. Did you come here on the "St. Paul?"
A. Yes, sir.
Q. Since you have been here have you heard the case discussed, or what purported to be the facts?
A. No, sir.
Q. Have the remarks that you have heard created any impression on your mind?
55 A. No, sir.
Q. Not influenced your mind at all, in any particular?
A. No, sir.
Q. Have you ever at any time been a marshal, sheriff, deputy sheriff, or police officer?
A. No, sir.
Q. Are you conscious of any bias or feeling of any kind that would prevent you from making a fair and impartial juror?
A. No, sir.

Q. Have you ever resided at Unalaska or Dutch Harbor?
A. Coming up last year we stopped here a week.
Q. Then you have had no acquaintance with the people living here, except during the time you have been here during this term of court?
A. That is all.
Q. Do you stop over at Dutch Harbor or on this side?
A. At Dutch Harbor.
Q. What is your native State, Mr. Smilie?
A. Ontario, Canada.
Q. Are you a citizen of the United States?
A. Yes, sir.
Mr. SULLIVAN. We pass the juror for cause.
Q. (By Mr. MCGINN.) Do you reside at Nome?
A. Yes, sir.
Q. Have you resided there since June of last year?
A. Yes, sir.
Q. Where have you been employed?
A. George L. Fish's and the A. C. Company.
56 Q. Are you acquainted with the defendant, Fred Hardy?
A. No, sir.
Q. Are you acquainted with Mr. Sullivan?
A. Only since coming to Unalaska.
Q. Are you acquainted with Mr. Corson?
A. Just since coming to Unalaska.
Q. Did you ever have any business dealings with either of these gentlemen?
A. No, sir.
Q. Were you acquainted with Con Sullivan, Florence Sullivan, or P. J. Rooney during their lifetime?
A. No, sir.
Q. Are you acquainted with Owen Jackson?
A. Only by sight.
Q. Do you know George Aston?
A. No, sir.
Q. Do you know anything about the merits of this case?
A. No, sir.
Q. Have you at this time any opinion as to the guilt or innocence of the defendant?
A. No, sir.
Q. Do you feel that you could try this case fairly and impartially between the Government upon the one side and Fred Hardy on the other?
A. Yes, sir.
Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?
57 A. No, sir.
Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death upon circumstantial evidence?
A. Not if the circumstantial evidence convinces me that the party is guilty.

Q. If you were satisfied beyond a reasonable doubt you could render such a verdict, could you?
A. Yes, sir.
Q. Do you feel that it would require more and stronger evidence in a case of that kind than if the evidence were direct testimony?
Mr. SULLIVAN. I object to that question as immaterial.
The COURT. Objection sustained.
Mr. MCGINN. We pass the juror for cause.

Mr. L. D. MCLEAN, called as a juror, and having been duly sworn to answer questions, testified as follows:
Q. (By Mr. SULLIVAN.) Where do you reside?
A. In Nome.
Q. How long have you resided there?
A. Since June, 1900.
Q. What has been your occupation in Nome?
A. Mining, and I was also connected with the marshal's office as a deputy United States marshal.
58 Q. You are not a deputy now?
A. No, sir.
Q. Are you acquainted with Mr. McGinn, Asst. U. S. district att'y?
A. Yes, sir.
Q. Are you acquainted with Mr. Woods, U. S. district att'y?
A. Yes, sir.
Q. Have they ever transacted any business for you?
A. No, sir.
Q. How is your acquaintance with Mr. McGinn and Mr. Woods?
A. It is a friendly acquaintance.
Q. Would the fact that they are attorneys in a case have any effect upon you as a juror?
A. No, sir.
Q. What State are you originally from?
A. I am a Canadian by birth.
Q. You are an American citizen now?
A. Yes, sir.
Q. Were you ever in Alaska or Northwest Territory prior to coming to Nome last year?
A. No, sir.
Q. What State did you stay in before coming to Nome?
A. In Butte, Montana.
Q. Were you acquainted with Mr. Wood' in Montana?
A. No, sir.
Q. You have heard me state what this case was to the other jurors?
A. Yes, sir.
Q. Did you read any account or what purported to be an account of any matters connected with this case at Nome?
59 A. I did.
Q. It was published in one of the papers there, was it?
A. It was published in two or three, I believe.
Q. From what you read in these papers, did you form any opinion?
A. I did.

Q. Have you still got that opinion?

A. It would require evidence to remove it.

Q. Since you have been in Dutch Harbor or Unalaska, have you heard anything said about this case?

A. Nothing more than comment.

Q. From all that you have heard and read did you form an opinion as to the merits of this case?

A. Yes, sir.

Q. Have you that opinion now?

A. *I* have; yes, sir.

Q. Is that opinion such as it would require evidence to remove?

A. It is.

Q. If you went into the trial of this case as a juror, you would go in with a fixed opinion?

A. Yes, sir; I would.

Mr. SULLIVAN. We challenge the juror for cause.

Mr. MCGINN. We resist the challenge.

The COURT. Challenge is denied.

Q. (By Mr. MCGINN.) You say that you have read newspaper reports of this case?

A. I have.

Q. Where were those papers published?

A. In Nome.

60 Q. Did you read any other than Nome papers in regard to the facts in this case?

A. That was all.

Q. Do you know whether or not the statement set forth in the papers of Nome purported to be the facts or not?

A. I do not know.

Q. Have you discussed this case with any person who claimed to be acquainted with the facts in the case?

A. No, sir.

Q. Have you been present when any person narrated what purported to be the real facts in the case?

A. No, sir.

Q. Have you ever talked with any witnesses in the case?

A. No, sir.

Q. Then, Mr. McLean, the opinion that you now have at this time is not so strong that you could not be convinced otherwise?

A. No, sir.

Q. Do you not feel that if you were sworn and accepted as a juror in this case that you could disregard that opinion and go into the jury box and try this case upon the evidence and the law as given to you by the court?

A. I could.

Q. Is your opinion a fixed opinion or a slight opinion?

A. It is a slight opinion.

Q. Do you feel that if you were sworn and accepted as a juror in this case that you could disregard that opinion and try this defendant fairly and impartially?

A. Yes, sir.

61 Q. (By Mr. SULLIVAN.) If you were on trial for a similar offense would you be willing to be tried by a juror in your state of mind?

A. I think I would.

Q. You state that your opinion is such that it would require evidence to remove and you would go into the jury box with a fixed opinion?

A. Yes, sir.

Q. You have that opinion now?

A. Yes, sir. I *have an opinion which was acquired from* reading the papers and that alone.

Q. Are you acquainted with Owen Jackson?

A. I am not.

Q. Have you ever seen Mr. Jackson?

A. No, sir.

Q. Were you acquainted with Con Sullivan?

A. I believe not.

Q. Were you acquainted with any of the parties?

A. No, sir.

Mr. SULLIVAN. We submit, if the court please, that the juror has a fixed opinion.

The COURT. Challenge denied.

Mr. SULLIVAN. Defendant excepts.

Q. (By Mr. MCGINN.) Are you acquainted with the defendant, Fred Hardy?

A. I am not.

Q. Are you acquainted with Mr. Sullivan?

A. Slightly.

62 Q. Are you acquainted with Mr. Corson?

A. Slightly.

Q. Did you ever have any business relations with either of them?

A. No, sir.

Q. They never acted as your legal adviser?

A. No, sir.

Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?

A. No, sir.

Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death upon circumstantial evidence?

A. No, sir. Well, I would have to be satisfied.

Q. Do you know any reason why you could not try this case fairly and impartially between the United States upon the one side and the defendant, Hardy, on the other?

A. I do not.

Mr. MCGINN. We pass the juror for cause.

Mr. A. J. DIBERT, called as a juror, and having been first duly sworn to answer questions, testified as follows:

Q. (By Mr. SULLIVAN.) Where do you live?

A. In Nome.

Q. How long have you lived there?

63 A. Since June, 1900.

Q. What has been your occupation there?

A. A druggist.

Q. Were you acquainted with Mr. McGinn there?

A. Slightly.

Q. Are you acquainted with Mr. Wood, U. S. district attorney?.

A. No, sir.

Q. Did Mr. McGinn do any business, legal or otherwise, for you?

A. No, sir.

Q. You have heard me state what this case was about?

A. Yes, sir.

Q. Where were you born?

A. In Pennsylvania.

Q. What State did you live in before you left for Nome?

A. California.

Q. Were you at any time acquainted with P. J. Rooney, Con Sullivan, or Florence Sullivan?

A. No, sir.

Q. Do you know a man by the name of Owen Jackson?

A. No, sir.

Q. While you were in Nome, did you read any account in the papers of anything that purported to relate to this alleged offense?

A. I just read the headlines.

Q. From what you read did you form any opinion whatever?

A. No, sir.

Q. Did you hear the matter discussed in Nome or anything said about it?

A. No, sir.

64 Q. After you arrived here at Unalaska on the 19th of this month, did you hear anything about the case?

A. I only heard about the case in the court; a little outside.

Q. Have you heard anyone talk about it outside?

A. Very little.

Q. Have you formed any opinion from what you have heard as to the guilt or innocence of the defendant?

A. No, sir.

Q. You are not conscious of having any opinion in regard to the merits of this case at all?

A. No, sir.

Q. Have you ever been a police officer, a deputy marshal, sheriff, or deputy sheriff?

A. No, sir.

Q. Have you any relatives living in Unalaska or Dutch Harbor?

A. No, sir.

Q. Are you acquainted with the lieutenant here?

A. No, sir.

Q. (By Mr. McGinn.) Are you acquainted with the defendant, Fred Hardy?

A. No, sir.

Q. Are you acquainted with Mr. Sullivan, his attorney?

A. Very slightly.
Q. Are you acquainted with Mr. Corson?
A. About the same.
Q. Did you ever have any business dealings with either of them?
A. No, sir.
Q. Did you ever read anything about this case in the papers?
65 A. I have read a very little about it in the Nome papers.
Q. Did you form any opinion from what you read?
A. No, sir.
Q. Did you ever discuss the case with anybody who claimed to be acquainted with the facts?
A. No, sir.
Q. You have no opinion as to the guilt or innocence of the accused?
A. No, sir.
Q. Do you think that you could try this case fairly and impartially between the United States upon the one side and the defendant, Fred Hardy, upon the other?
A. Yes, sir; I think I could.
Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?
A. No, sir.
Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case on circumstantial evidence where the penalty prescribed by law is that of death?
A. No, sir.
Q. If you were accepted and sworn as a juror in this case, do you think you could try the case solely and exclusively upon the evidence given on the witness stand and the law as given to you by the court?
A. Yes, sir.
Mr. McGinn. We pass the juror for cause.

66 W. A. Miller, called as a juror, and having been first duly sworn to answer questions, testified as follows:
Q. (By Mr. Sullivan.) Where do you reside?
A. In Nome.
Q. How long have you resided there?
A. About fifteen months.
Q. What is your native State, Mr. Miller?
A. California.
Q. Did you come from California to Nome?
A. Yes, sir.
Q. Are you acquainted with Mr. McGinn?
A. Slightly.
Q. Are you acquainted with Mr. Wood, U. S. district attorney?
A. Slightly.
Q. Has either of them ever transacted any business, legal or otherwise, for you?
A. No, sir.
Q. While you were in Nome did you read in any of the papers or hear anything of what purported to be connected with this alleged offense?
A. Yes, sir.

Q. Did what you read create any impression upon your mind?
A. Not at all.
Q. Did you hear anything outside of the papers in Nome?
A. No, sir.
Q. You arrived here on the 19th of August?
A. Yes, sir.

67 Q. After your arrival at Unalaska have you heard anything about this case either at Dutch Harbor or Unalaska or any other place?

A. Nothing more than the usual talk.
Q. Did you hear anyone express an opinion as to the guilt or innocence of any particular person?
A. No, sir.
Q. Has what you have read created any impression upon your mind?
A. I do not think so.
Q. You think you could take this case and try it fairly and impartially just as if you had not read the papers?
A. Yes, sir.
Q. You are not conscious of any bias, feeling, or sentiment that would in any way make you an unfair or partial juror?
A. Not at all.
Q. Are you acquainted with Mr. Owen Jackson?
A. No, sir.
Q. Were you acquainted with Con Sullivan, Florence Sullivan, or P. J. Rooney?
A. No, sir; I do not think I am.
Q. Are you acquainted with Judge Whipple, United States commissioner here?
A. Very slightly.
Q. Are you acquainted with Mr. Sullivan, who was acting as a deputy marshal when this man was arrested?
A. Merely to speak to him.
Mr. SULLIVAN. We pass the juror for cause.

68 Q. (By Mr. MCGINN.) Are you acquainted with the defendant?
A. No, sir.
Q. Are you acquainted with Mr. Sullivan, his attorney?
A. The first time I met him was coming down on the boat.
Q. Are you acquainted with Mr. Corson?
A. Very slightly.
Q. Your acquaintance has been since you arrived at Dutch Harbor?
A. Yes; and coming down on the boat.
Q. You never had any business relations with them?
A. No, sir.
Q. You stated that you read the newspaper account published in the Nome papers?
A. Yes, sir.
Q. Have you ever discussed this case with anyone?
A. I have not.
Q. You have at this time no opinion one way or the other?
A. Not at all.
Q. Do you feel that if you were accepted as a juror that you could try this case fairly and impartially?

A. Yes, sir.

Q. Upon the evidence which shall be adduced at the trial and upon the law as given to you by the court?

A. Yes, sir.

Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?

A. No, sir.

Q. Have you any such conscientious scruples as would prevent
69 or preclude you from rendering a verdict on circumstantial evidence in a case where the penalty prescribed by law is that of death?

A. Not at all.

Mr. McGinn. We pass the juror for cause.

Q. (By Mr. Sullivan.) Mr. Miller, have you ever been a marshal, deputy marshal, sheriff, or police officer of any kind?

A. I have been a deputy sheriff in Marin County, California.

Q. How long?

A. About six years.

Q. What is your present occupation in Nome, Mr. Miller?

A. Mining.

Q. How long since you acted as deputy sheriff or in the capacity as such?

A. About a year and a half.

Q. Had you been serving continuously for six years immediately preceding that?

A. Just off and on.

Q. For how long a period?

A. A year and a half at a time.

Q. Were you regularly attached?

A. No; I was just an outside deputy.

Mr. Sullivan. We pass the juror for cause.

M. L. De Forest, called as a juror, and having been first duly sworn to answer questions, testified as follows:

Q. (By Mr. Sullivan.) Where do you live?

70 A. In Nome.

Q. How long have you lived there?

A. Since the 14th of April, 1900.

Q. Where did you live before that?

A. In Dawson.

Q. How long had you been in Dawson?

A. Six months.

Q. Where had you resided before coming to Dawson?

A. Very near all over the United States. I was in the theatrical business.

Q. When did you come to Dawson?

A. In the spring of '98.

Q. Have you ever been a marshal, deputy marshal, sheriff or peace officer of any kind?

A. No, sir.

Q. Are you acquainted with Mr. McGinn?

A. Just since I came to Unalaska.
Q. Are you acquainted with Mr. Wood, U. S. district attorney?
A. By sight only.
Q. Did either of them ever transact any business for you?
A. No, sir.
Q. What is your native State?
A. Illinois.
Q. While you were in Nome, did you read anything in the papers in regard to this alleged offense?
A. I believe I did; I just glanced at an extra, but did not pay any particular attention to it.
Q. Did you hear anything from any individual there, purporting
71 to relate the facts?
A. No, sir.
Q. Did you form any opinion from what you read in the papers?
A. No, sir.
Q. Since your arrival at Unalaska or Dutch Harbor have you heard any comment upon what purported to be the facts in the case?
A. Comments, yes.
Q. Have you heard people talk about it who purported to know any of the facts?
A. No, sir.
Q. Are you acquainted with the man who was formerly a deputy marshal here, Mr. Sullivan?
A. I met him since I have been here; I know him when I see him; I never heard him say anything about the case.
Q. Anything that you have heard here, has it created any impression upon your mind?
A. No, sir.
Q. You are conscious of no bias or prejudice of any kind?
A. No, sir.
Q. If you were to sit upon the jury and try the case, you could try the case fairly and impartially between the defendant upon the one side and the Government upon the other?
A. Yes, sir.
Q. You never have resided in Unalaska or Dutch Harbor?
A. This is my first time.
Q. Have no relatives living here?
A. Not that I know of.
Mr. SULLIVAN. We pass the juror for cause.
72 Q. (By Mr. MCGINN.) Are you acquainted with the defendant?
A. No, sir.
Q. Are you acquainted with Mr. Sullivan or Mr. Corson, his attorney?
A. Just since I came here.
Q. Have you ever had any business transactions with either of them?
A. No, sir.
Q. I will ask you if you have any opinion, one way or the other, as to the guilt or innocence of the defendant?
A. None whatever.
Q. Do you know any reason why you could not try this case fairly and impartially?

A. No, sir.

Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?

A. No, sir.

Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case of circumstantial evidence where the penalty prescribed by law is that of death?

A. No, sir; not if it satisfies my mind.

Mr. McGinn. We pass the juror for cause.

August Mahrt, called as a juror, and having first been duly sworn to answer questions, testified as follows:

73 Q. (By Mr. McGinn.) Where do you live?

A. In Nome.

Q. How long have you resided there?

A. A little over a year.

Q. Where did you reside before coming to Nome?

A. Dawson.

Q. How long were you at Dawson?

A. Since June, '98.

Q. Where did you reside before going to Dawson?

A. Montana.

Q. What is your native State?

A. Germany.

Q. How long did you live in Montana?

A. Since '82.

Q. Whereabouts in Montana did you live?

A. Helena.

Q. Were you acquainted with Mr. Woods in Montana?

A. Slightly.

Q. Do you know Mr. McGinn?

A. Slightly.

Q. Did either of them ever transact any business for you?

A. No, sir.

Q. Were you ever acquainted with P. J. Rooney, Con Sullivan, or Florence Sullivan?

A. No, sir.

Q. Do you know Owen Jackson?

A. No, sir.

74 Q. Are you acquainted with Judge Whipple, U. S. commissioner here?

A. No, sir.

Q. Do you know Mr. Sullivan, ex-deputy marshal here?

A. No, sir; not that I know of.

Q. While you were in Nome did you read any account of what purported to be in relation to this transaction or any part of it?

A. I think I read something about it.

Q. Did it create any impression upon your mind in any way?

A. No, sir.

Q. Did you hear anyone make comments upon this matter in Nome?

A. No, sir.
Q. You arrived here on August 19th?
A. Yes, sir.
Q. Since you have been in Dutch Harbor or Unalaska have you heard anything in regard to the case?
A. Only what I have heard in court.
Q. Have you formed any opinion in regard to the merits of the case?
A. No, sir.
Q. You have never lived in this vicinity?
A. No, sir.
Q. Have no relatives here?
A. No, sir.
Q. What is your occupation?
A. I have been in the saloon business most of the time.
Q. Where were you located at Nome?
A. I have been working at the Northern, at Nome.
75 Q. Do you expect to return to Nome when you get through with your duties here?
A. Yes, sir.
Mr. SULLIVAN. We pass the juror for cause.
Q. (By Mr. McGINN.) Are you acquainted with the defendant, Hardy?
A. No, sir.
Q. Do you know Mr. Sullivan or Mr. Corson?
A. Slightly.
Q. Were you acquainted with them at Nome?
A. By sight.
Q. Did you ever have any business dealings with them?
A. No, sir.
Q. Have you read the paper accounts in regard to this case?
A. I did not pay much attention to them.
Q. Did what you read leave any impression upon your mind?
A. No, sir.
Q. Have you ever discussed this case with anyone who purported to to be acquainted with the facts?
A. No, sir.
Q. You have no opinion as to the guilt or innocence of the accused at the present time?
A. No, sir.
Q. Do you feel that you could try this case fairly and impartially between the defendant upon the one side and the Government upon the other?
A. I could.
76 Q. Do you feel that you could try the case from the evidence adduced at the trial by the witnesses, and the law as given to you by the court?
A. Yes, sir.
Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?
A. No, sir.
Q. Have you any such conscientious scruples as would prevent or pre-

clude you from rendering a verdict of guilty in a case of circumstantial evidence where the penalty prescribed by law is that of death?

A. No, sir.

Q. You know now of no reason why you could not sit as an impartial juror in this case?

A. I do not.

Mr. McGinn. We pass the juror for cause.

M. H. Lloyd, called as juror, and having been first duly sworn to answer questions, testified as follows:

Q. (By Mr. Sullivan.) Where do you reside?

A. In Nome.

Q. How long have you lived in Nome?

A. Since June, 1900.

Q. Where did you live before coming to Nome?

A. I have lived in Alaska and British Columbia since 1898.

Q. What State were you from before coming to Alaska?

77 A. From California.

Q. Is that your native State?

A. The State of Washington is my native State.

Q. Whereabouts in Washington were you born?

A. I was born on Woodby Island.

Q. Have you ever been a deputy marshal, sheriff, deputy sheriff, or peace officer of any kind?

A. No, I have not.

Q. What is your business in Nome?

A. I was in the tobacco business.

Q. While you were in Nome did you read any account in any of the newspapers of this alleged offense?

A. Well, I saw something in the San Francisco Examiner; I believe it was a part of an affidavit which had some bearing on the case. It was, I believe, an affidavit supposed to be made by a man who escaped from Unimack Island; I do not remember the name.

Q. From what you read in the paper did that create any impression or opinion in your mind?

A. No, it has not.

Q. Do you think you could try the case under the evidence and the instructions given to you by the court the same as if you had not read this affidavit?

A. Yes, sir.

Q. Have you heard anyone narrate the case or talk about the case?

A. No, sir.

Q. Since your arrival at Unalaska have you heard anyone

77½ discuss or mention this case in any way?

A. Yes, sir; I have heard it spoken of at different times.

Q. From what you have heard has it made any impression upon your mind?

A. No, sir.

Q. Have you heard any of the facts in the case?

A. No, sir.

Q. Have you heard Judge Whipple or ex-Deputy Marshal Sullivan say anything about the case?

A. No, sir.
Q. You do not know Owen Jackson?
A. No, sir; I do not.
Q. You have no relatives living at Unalaska or Dutch Harbor, or vicinity?
A. No, sir.
Q. Do you feel that you could try this case fairly and impartially, without regard to anything you have heard or read?
A. Yes, sir.
Q. Are you acquainted with Mr. McGinn?
A. Yes, sir.
Q. How long have you known him?
A. Since November of last year.
Q. Has he ever done any legal business for you?
A. Yes, sir.
Q. Does the relation of attorney and client exist now?
A. Yes, sir.
Q. He is your attorney at the present time?
78 A. Yes, sir.
Q. Are you acquainted with Mr. Wood, U. S. district attorney?
A. Slightly.
Q. Is he an attorney for you also?
A. I believe he is associated with Mr. McGinn.
Mr. SULLIVAN. We challenge the juror for cause.
Mr. MCGINN. We deny the challenge.
Q. (By Mr. SULLIVAN.) Would the fact that Mr. McGinn may be acting for you as an attorney in any way effect your verdict in this case?
A. None whatever.
Q. You think you could try the case as fairly and as impartially as if he were not acting in the case?
A. Yes, sir.
Mr. SULLIVAN. Pass the juror for cause.
Q. (By Mr. MCGINN.) Are you acquainted with the defendant?
A. No, sir.
Q. Are you acquainted with Mr. Sullivan or Mr. Corson?
A. I met them at Dutch Harbor.
Q. Did you know them in Nome?
A. No, sir.
Q. Ever had any business relations with them?
A. No, sir.
Q. Do you know anything about the merits of this case?
A. I do not.
Q. You read the accounts in the Nome papers?
A. No, sir; I saw one account in a San Francisco paper.
79 Q. Has it left any impression upon your mind?
A. It has not.
Q. You have never discussed the case with anyone who purported to be acquainted with the facts in the case?
A. No, sir.
Q. Do you think you could try this case fairly and impartially between the defendant on the one side and the United States on the other?
A. Yes, sir.

Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?

A. No, sir.

Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case on circumstantial evidence where the penalty prescribed by law is that of death?

A. Not if I thought the evidence was sufficient.

Q. If it satisfied your mind beyond a reasonable doubt you could render such a verdict?

A. I could.

Q. Mr. McGINN. We pass the juror for cause.

O. B. CRANE, called as a juror, and having been first duly sworn to answer questions, testified as follows:

Q. (By Mr. SULLIVAN.) Where do you live?

80 A. In Nome.

Q. How long have you been there?

A. Two years.

Q. Where did you reside before coming to Nome?

A. In Montana.

Q. Is that your native State?

A. Yes, sir.

Q. Where were you born?

A. In Ft. Benton.

Q. Were you acquainted with Mr. Wood in Montana?

A. No, sir.

Q. Are you acquainted with Mr. McGinn and Mr. Woods?

A. Yes, sir.

Q. Does the relation of attorney and client exist between you?

A. No, sir.

Q. What business were you in in Nome?

A. I was with the N. A. T. Company.

Q. Were you at any time acquainted with Florence Sullivan, Con Sullivan, or P. J. Rooney?

A. Not that I know of.

Q. Do you know one Owen Jackson?

A. No, sir.

Q. Have you met anyone by that name since you have been in Unalaska?

A. No, sir.

Q. You arrived here on the 19th of August?

A. Yes, sir.

Q. Did you read anything in the newspapers in Nome in regard

81 to this matter.

A. No, sir.

Q. Did you hear it mentioned before you left there?

A. Yes, sir.

Q. By any person purporting to be acquainted with the actual facts in the case?

A. No, sir.

Q. Did you form any impression?
A. No, sir.
Q. Have you heard anyone mention the case here at Unalaska, or at Dutch Harbor or vicinity?
A. Just a few remarks.
Q. Did they have any impression upon your mind?
A. No, sir.
Q. Are you acquainted with the U. S. commissioner, Judge Whipple?
A. Just since I have been here.
Q. Are you acquainted with Mr. Sullivan, ex-deputy marshal?
A. No, sir.
Q. Have you ever heard either one of them make any remarks in regard to the case?
A. No, sir.
Q. Are you conscious of any bias or prejudice of any kind?
A. No, sir.
Q. Have you any relatives living here at Unalaska, or at Dutch Harbor?
A. No, sir.
Q. Have you at any time ever been a marshal, deputy marshal, sheriff, or police officer of any kind?
82 A. No, sir.
Q. Do you know of any reason why you could not sit as a trial juror in this case?
A. No, sir.
Mr. SULLIVAN. We pass the juror for cause.
Q. (By Mr. MCGINN.) Are you acquainted with the defendant, Fred Hardy?
A. No, sir.
Q. Do you know Mr. Sullivan and Mr. Corson?
A. Just since I have been here.
Q. Never had any business transactions with either of them?
A. No, sir.
Q. Did you ever read anything about the case?
A. No, sir.
Q. Did you ever talk to anyone who purported to be acquainted with the facts in the case?
A. No, sir.
Q. You have no opinion as to the guilt or innocence of the accused?
A. No, sir.
Q. Do you know of any reason why you can not sit as a fair and impartial juror in this case?
A. No, sir.
Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?
83 A. No, sir.
Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case on circumstantial evidence where the penalty prescribed by law is that of death?

A. No, sir; not if the evidence was strong enough.
Q. If the evidence satisfied your mind beyond a reasonable doubt do you feel that you could render a verdict of guilty?
A. Yes, sir.
Mr. McGinn. We pass the juror for cause.
Defendant's first peremptory.
Mr. Sullivan. We excuse Mr. Baldwin.

Chas. H. Hayden, called as juror, and having been first duly sworn to answer questions, testified as follows:
Q. (By Mr. Sullivan.) Where do you reside?
A. In Nome, Alaska.
Q. How long have you been there?
A. Off and on since the spring of '99.
Q. What has been your occupation?
A. Mining.
Q. What is your native State?
A. State of Washington.
Q. Did you come from Washington to Nome?
A. No, sir; I was in California five years prior to coming to Nome.
Q. Are you acquainted with Mr. McGinn.
A. Yes, sir.
84 Q. Are you acquainted with Mr. Wood, U. S. district attorney?
A. No, sir.
Q. Does the relation of attorney and client exist between Mr. McGinn and yourself?
A. No, sir.
Q. Were you ever acquainted with P. J. Rooney, or Florence Sullivan, or Con Sullivan?
A. Not that I know of.
Q. Have you ever been acquainted with Mr. Owen Jackson?
A. No, sir.
Q. Have you ever been an officer, a marshal, deputy marshal, sheriff, or police officer of any kind?
A. No, sir.
Q. Are you acquainted with the United States commissioner at Unalaska, Judge Whipple?
A. No, sir.
Q. Do you know ex-Deputy Marshal Sullivan at Unalaska?
A. I know him by sight.
Q. Did you, in Nome, read anything about the circumstances in regard to this case?
A. No, sir.
Q. You know what the case is?
A. Yes, sir.
Q. Did you hear anybody in Nome make any remarks in regard to the case or state what purported to be any of the facts in the case?
A. No, sir.
Q. You came on the "St. Paul" as a juror?
85 A. Yes, sir.
Q. After your arrival at Unalaska have you heard anything stated by anyone in relation to the case?

A. I have heard it mentioned.

Q. Have you heard anyone state what purported to be the facts in the case?

A. Not that I can remember.

Q. Have you heard anyone state that they believed the murder to have been committed by this defendant?

A. Yes, sir; I have heard that.

Q. Do you know whether the person was any person connected with the case or not?

A. I do not.

Q. Did the remark that you heard of that character create any impression upon your mind in any way?

A. Not in the least.

Q. You know absolutely nothing of the merits of the case?

A. No, sir.

Q. At the present time you have no impression as to whether any particular person or individual committed this crime or not, as alleged?

A. No, sir; I do not.

Q. Have you any relatives living in Dutch Harbor or Unalaska, or in that vicinity.

A. No, sir.

Mr. SULLIVAN. We pass the juror for cause.

Q. (By Mr. McGINN.) Are you acquainted with the defendant,
86 Fred Hardy?

A. No, sir.

Q. Are you acquainted with Mr. Sullivan, his attorney?

A. Yes, sir.

Q. How long have you known him?

A. About a year.

Q. In Nome?

A. Yes, sir.

Q. Has he ever done any business for you in a legal way?

A. He gave me some information once.

Q. Does the relation of attorney and client exist between you and Mr. Sullivan?

A. No, sir.

Q. Has your relation been intimate?

A. No, sir.

Q. Are you acquainted with Mr. Corson?

A. I met him here.

Q. You say that you know nothing about the merits of the case?

A. No, sir.

Q. Never read any newspaper account?

A. No, sir.

Q. Never discussed the case with anybody who purported to be acquainted with the facts in the case?

A. No, sir.

Q. Do you feel, Mr. Hayden, that if you were accepted and sworn as a juror in this case that you could try it fairly and impartially between the defendant upon the one side and the Government on the other?
87 A. I think so.

Q. Do you say that you could try the case fairly from the evidence and the law as given to you by the court?

A. Yes, sir.

Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?

A. No, sir.

Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is death upon what is known as circumstantial evidence?

Mr. SULLIVAN. We object to the question on the ground that it is not proper cross-examination.

The COURT. Objection overruled.

Mr. SULLIVAN. We take an exception.

The COURT. You may answer the question Mr. Hayden.

A. Not if the evidence was strong enough.

Q. That is, if you could satisfy your mind beyond a reasonable doubt you could render such a verdict?

A. I think so.

Q. Are you certain about it?

A. Yes, sir.

Mr. MCGINN. We pass the juror for cause.

Mr. SULLIVAN. We excuse Mr. McLean.

88 F. C. JOHNSON, called as a juror, and having been duly sworn to answer questions, testified as follows:

Q. (By Mr. SULLIVAN.) Where do you reside?

A. In Nome?

Q. How long have you lived there?

A. Since June 1st, 1900.

Q. Where did you live prior to that time?

A. St. Louis.

Q. Was that your first trip to Alaska?

A. Yes, sir.

Q. What was your occupation in St. Louis?

A. I have been a railroad man for ten years.

Q. What was your business at Nome?

A. Last summer I was mining at Topkok.

Q. Are you acquainted with Mr. McGinn?

A. Just since I came to Unalaska.

Q. You came to Unalaska on the "St. Paul" on the 19th?

A. Yes, sir.

Q. Are you acquainted with Mr. Wood, U. S. district att'y?

A. I know him by sight only.

Q. Were you at any time acquainted with P. J. Rooney, Con Sullivan or Florence Sullivan?

A. I was not.

Q. Are you acquainted with Owen Jackson?

A. No, sir.

89 Q. Have you met anybody by the name of Jackson here at Unalaska or at Dutch Harbor?

A. No, sir.

Q. Are you acquainted with the U. S. commissioner, Judge Whipple?

A. I know him by sight.

Q. Do you know Mr. Sullivan, who has been a U. S. deputy marshal at this place?

A. I have a casual acquaintance with him.

Q. Have you ever been a marshal, deputy marshal, sheriff, or peace officer of any kind?

A. No, sir.

Q. While in Nome did you read any account of what purported to be any of the facts in this matter?

A. It strikes me that I saw a sketch of it in one of the Nome papers.

Q. Did it create any impression upon your mind?

A. It did not; I thought it was merely a news story.

Q. Did you ever hear it discussed by anyone in Nome?

A. I did not.

Q. After your arrival at Unalaska, have you heard the matter remarked about or discussed in any way?

A. I have heard remarks about it. I have heard more about it this morning than before.

Q. From what you have heard in the court room this morning, did you get any impression of the facts in the case?

A. I did not.

Q. Are you aware of having any bias, or sentiment, or prejudice for or against the Government?

A. No, sir.

90 Q. Have you any reason why you should not sit as a trial juror in this case and try it according to the law and the evidence?

A. I have not.

Mr. SULLIVAN. We pass the juror for cause.

Q. (By Mr. MCGINN.) How long have you resided in Nome?

A. Since June, 1900.

Q. What State are you from?

A. Arkansas.

Q. Are you acquainted with the defendant?

A. No, sir.

Q. Are you acquainted with Mr. Sullivan or Mr. Corson, his attorneys?

A. Never met them before coming here.

Q. Never had any business dealings with them?

A. No, sir.

Q. You know nothing about the merits of this case?

A. I do not.

Q. Nothing about the facts?

A. No, sir.

Q. You know of no reason why you could not try the case fairly and impartially?

A. I do not.

Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of death in a case where the penalty prescribed by law is that of death?

A. No, sir.

Mr. SULLIVAN. We object to the question as immaterial and irrelevant.

91 The COURT. Objection overruled.

Mr. SULLIVAN. We except.

Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is death upon circumstantial evidence?

Mr. SULLIVAN. Defendant objects to the question.

The COURT. Same ruling.

Mr. SULLIVAN. Exception.

A. Not if I was convinced beyond doubt.

Q. That is to say, if you were convinced beyond a reasonable doubt?

A. That is what I mean; if I was convinced beyond a reasonable doubt.

Mr. MCGINN. We pass the juror for cause.

Mr. MCGINN. We excuse Mr. De Forest.

ROBERT BRODNOX, called as a juror, and having been duly sworn to answer questions, testified as follows:

Q (By Mr. SULLIVAN.) Where do you reside?

A. In Nome.

Q. How long have you been there?

A. Part of two years.

Q. What two years do you mean?

92 A. Last year and this year. I was there last summer and this summer.

Q. You did not remain there during the winter?

A. No, sir.

Q. What is your native State?

A. North Carolina.

Q. Where did you reside prior to coming to Nome last year?

A. In New York State.

Q. Are you acquainted with Mr. McGinn?

A. I am.

Q. Are you acquainted with Mr. Wood, U. S. district att'y?

A. No, sir.

Q. Does the relation of attorney and client exist between you and Mr. McGinn?

A. No, sir.

Q. Were you ever, at any time, acquainted with Florence Sullivan, Con Sullivan, or P. J. Rooney?

A. No, sir.

Q. Were you ever acquainted with Owen Jackson?

A. No, sir.

Q. Have you ever met a man by that name in Unalaska or Dutch Harbor?

A. No, sir.

Q. When you were in Nome did you read any account in the papers relating to this matter in any way?

A. Yes, sir.

Q. Did the newspaper account purport to be the facts relating
93 to the merits of the case?

A. It purported to be; yes.

Q. Did you form any opinion upon the merits of the case from what you read?

A. No, sir.

Q. Did you hear anyone discuss the matter in Nome prior to your departure for Unalaska?

A. Yes, sir.

Q. By anyone who purported to relate the facts in the case?

A. No, sir.

Q. What were the remarks—of a general nature or specific?

A. Of a general nature.

Q. From what you heard remarked in Nome did you form any opinion as to the guilt or innocence of the prisoner?

A. No, sir.

Q. You came here on the "St. Paul?"

A. Yes, sir.

Q. Since your arrival at Unalaska or Dutch Harbor have you heard anything said about the case?

A. Yes, sir.

Q. Has anyone undertaken to relate to you what purported to be the facts in the case?

A. No, sir.

Q. Are you acquainted with U. S. Commissioner Whipple?

A. I am not.

Q. Are you acquainted with ex-Deputy Marshal Sullivan?

A. No, sir.

94 Q. From what you have heard in Unalaska and Dutch Harbor or that vicinity have you formed any opinion as to the guilt or innocence of the defendant, or as to the merits of the case?

A. No, sir.

Q. Have you any bias or prejudice for or against the Government or the defendant?

A. No, sir.

Q. Do you know of any reason why you should not sit as a trial juror in the case?

A. No, sir.

Mr. SULLIVAN. We pass the juror for cause.

Q. (By Mr. MCGINN.) Are you acquainted with the defendant, Fred Hardy?

A. I am not.

Q. Are you acquainted with Mr. Sullivan, his attorney?

A. Yes, sir.

Q. How long have you known him?

A. About ten years.

Q. Where did you know him?

A. In Tacoma.

Q. Was Mr. Sullivan at that time your attorney?

A. No, sir.

Q. Is he at the present time?

A. He has attended to some law business for me; yes, sir.
Q. Does the relation of attorney and client exist between you?
A. Yes, sir.
Q. Has your acquaintance been of a friendly nature?
95 A. Yes, sir.
Q. You have been good friends during the last ten years?
A. Yes, sir.
Q. Are you acquainted with Mr. Corson?
A. Yes, sir.
Q. How long have you known him?
A. Two years.
Q. Where have you known him?
A. In Seattle, Nome, and here.
Q. Does the relation of attorney and client exist?
A. We are associated in business, yes; we have mining interests.
Q. Partners?
A. Yes, sir.
Q. Do you feel that the intimate relation existing between you and the attorneys for the defendant would influence you in any way in arriving at a verdict in this case?
A. No, sir.
Q. Don't you think that your feelings would lean toward them—that your friendship would influence you in arriving at a verdict?
A. No, sir.
Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?
A. No, sir.
Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of death in a
96 case on circumstantial evidence where the penalty prescribed by law is that of death?
A. Not if I was satisfied with it.
Q. Can you determine the amount of evidence that would be necessary to satisfy you?
A. No, sir.
Q. Would it have to be demonstrative?
A. I would have to be very certain of it.
Q. If it satisfied you beyond a reasonable doubt?
A. Beyond a reasonable doubt; yes.
Q. What do you mean by a reasonable doubt, Doctor?
Mr. SULLIVAN. I object to that question as immaterial.
The COURT. Objection overruled.
Mr. SULLIVAN. We take an exception.
A. I mean that the circumstances were so strong that I had no possible doubt in the matter at all.
Q. It would practically result in demonstration to you?
A. Yes, sir.
Mr. MCGINN. We challenge the juror for cause.
Mr. SULLIVAN. We deny the challenge.
The COURT. Challenge denied.

Q. If the Court laid down the meaning of "reasonable doubt" to you somewhat different from that, would you feel inclined to follow the Court's definition of reasonable doubt, and render your verdict in accordance with the Court's definition of "reasonable doubt?"

A. In case I had any doubt about it, I would not believe in taking a man's life. If I had no possible doubt in my mind, then I
97 would be satisfied to render a verdict of guilty.

Mr. McGINN. We pass the juror for cause.

Mr. SULLIVAN. We excuse Mr. Lloyd.

GEORGE PADDLEFORD, called as a juror, and having been duly sworn to answer questions, testified as follows:

Q. (By Mr. SULLIVAN.) Where do you reside?

A. I have been residing for the past year in Nome.

Q. Where did you live before that time?

A. In Dawson.

Q. How long had you been in Dawson before coming to Nome?

A. Three years.

Q. Where did you reside before going to Dawson?

A. Los Angeles, California.

Q. What was your occupation in Los Angeles?

A. I studied medicine.

Q. Have you ever at any time been a United States marshal, a sheriff or deputy sheriff, or peace officer of any kind?

A. No, sir.

Q. What is your business at Nome?

A. Mining.

Q. Are you acquainted with Mr. McGinn?

A. By sight only.

Q. Do you know Mr. Wood, U. S. district attorney?

98 A. I do not.

Q. Were you ever acquainted with P. J. Rooney, Florence Sullivan or Con Sullivan?

A. Not that I know of.

Q. Are you acquainted with Owen Jackson?

A. No, sir.

Q. Have you met a man by the name of Jackson here or at Dutch Harbor?

A. No, sir.

Q. You came here on the "St. Paul?"

A. Yes, sir.

Q. While in Nome did you read any account in the papers of what purported to be the facts in the case?

A. No, sir; I have not read the account at all; I heard the street cryers calling it.

Q. Have you ever talked to anybody in regard to the case who purported to know the facts in the case?

A. I never have.

Q. After your arrival at Unalaska have you heard anything in regard to the case?

A. Passing comment only.

Q. Were these remarks made by any parties—do you know if they were witnesses?

A. Not that I know of.

Q. Are you acquainted with Judge Whipple, U. S. commissioner at Unalaska?

A. By sight only.

99 Q. Are you acquainted with Mr. Sullivan, ex-deputy marshal here?

A. I never have spoken to him.

Q. Never heard either of those say anything about the case to anyone?

A. Not a word.

Q. From the remarks that you have heard here and the passing comments that have been made in your presence, have they made any impression upon your mind?

A. No, sir.

Q. You now have no impression or opinion upon the guilt or innocence of the defendant?

A. No, sir.

Q. Are you conscious of any bias or prejudice of any kind?

A. No, sir.

Q. Do you think you could try the case fairly and impartially upon the law and the evidence given to you by the court upon the trial?

A. I think I could.

Mr. SULLIVAN. We pass the juror for cause.

Q. (By Mr. MCGINN.) Are you acquainted with the defendant, Fred Hardy?

A. No, sir.

Q. Are you acquainted with Mr. Sullivan, his attorney?

A. Only by sight.

Q. Are you acquainted with Mr. Corson?

A. In the same way.

Q. Where were you subpœna'd in this case?

100 A. At Nome.

Q. You came on the "St. Paul?"

A. Yes, sir.

Q. You know nothing about the merits of the case, whatever?

A. Nothing at all.

Q. And at this time have no opinion at all as to the guilt or innocence of the accused?

A. No, sir.

Q. You know of no reason why you could not sit as a fair and impartial juror?

A. No, sir.

Q. What State are you from?

A. California.

Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?

A. No, sir.

Q. Have you any such conscientious scruples or opinions as would

prevent or preclude you from rendering a verdict of guilty in a case on circumstantial evidence where the penalty prescribed by law is that of death?

A. Not if it was strong enough.

Q. How strong would it have to be?

Mr. SULLIVAN. We object to the question as immaterial and too general.

The COURT. Objection sustained.

Q. If the evidence satisfied you beyond a reasonable doubt would you be able to render such a verdict?

101 A. I would.

Q. Would you require the evidence to demonstrate the guilt of the accused?

Mr. SULLIVAN. We object to the question.

The COURT. Objection sustained.

Q. What do you mean by reasonable doubt?

A. Well, if I felt that the man accused was guilty.

Mr. MCGINN. We pass the juror for cause.

Mr. SULLIVAN. We excuse Mr. Miller.

B. L. BOSQUI, called as a juror, and having been duly sworn to answer questions, testified as follows:

By Mr. SULLIVAN:

Q. Where do you reside now?

A. In Nome.

Q. How long have you lived there?

A. A little over two years.

Q. What has been your occupation at Nome?

A. For a while I was connected with one of the companies, and since then I have been mining.

Q. Where did you reside before coming to Nome?

A. California.

Q. Are you acquainted with Mr. McGinn?

A. I am.

Q. Are you acquainted with Mr. Wood, U. S. district attorney?

102 A. Yes, sir.

Q. Does the relation of attorney and client exist between you and either of them?

A. No, sir.

Q. Has it ever existed?

A. No, sir.

Q. Were you ever acquainted with Con Sullivan, Florence Sullivan, or P. J. Rooney?

A. No, sir.

Q. Do you know a man at Unalaska by the name of Owen Jackson?

A. No, sir.

Q. Did you ever have any conversation with a man by that name?

A. No, sir.

Q. Have you ever been a marshal, deputy marshal, sheriff, or deputy sheriff?

A. No, sir.

Q. Prior to your coming to Unalaska, at the beginning of this court, did you read any account in the papers at Nome or outside papers in regard to this matter?

A. No, sir.

Q. Did you ever hear anyone mention or discuss it in any way?

A. I have heard it mentioned at Nome and here, too?

Q. You came here on the 19th?

A. Yes, sir.

Q. After you arrived here, you say you have heard it mentioned?

A. Yes, sir.

Q. Have you heard anyone say what purported to be the facts?

103 A. Yes, sir.

Q. Did you ever have any business dealings with him?

A. No, sir.

Q. Are you acquainted with Mr. Corson?

A. Slightly.

Q. Did you ever have any business relations with him?

A. No, sir.

Q. Have you any such conscientious scruples as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?

A. No, sir.

Q. Do you feel that you could render such a verdict on circumstantial evidence?

A. No, sir; I have conscientious scruples as regards to murder where the penalty is death upon circumstantial evidence.

Mr. McGINN:

104 A. No, sir.

Q. Are you acquainted with Judge Whipple?

A. I have met him.

Q. Have you heard him make any remarks?

A. No, sir.

Q. Are you acquainted with Mr. Sullivan, ex-deputy U. S. marshal?

A. No, sir.

Q. From what you heard mentioned since your arrival at Unalaska, have you formed any impression or opinion as to the guilt or innocence of the defendant, or upon the merits of the case in any way?

A. No, sir.

Q. Has what you have heard created any prejudice or bias in your mind in any way in connection with it?

A. No; it has not.

Q. Do you know of any reason why you should not sit as a trial juror in this case?

A. I do not.

Q. Have you any relatives living at Unalaska or Dutch Harbor?

A. No, sir.

Mr. SULLIVAN. We pass the juror for cause.

Q. (By Mr. McGINN.) Are you acquainted with the defendant?

A. No, sir.

Q. Are you acquainted with Mr. Sullivan, his attorney?
A. Casually.
Q. Are you acquainted with Mr. Corson?
A. Since arriving at Dutch Harbor.
105 Q. Ever had any business dealings with either of them?
A. No, sir.
Q. Did you ever read any newspaper accounts of this case?
A. I have not.
Q. Have you ever discussed the case with anyone?
A. I have not.
Q. You have no opinion now as to the guilt or innocence of the accused?
A. No, sir.
Q. Do you feel that if you were accepted as a juror in this case that you could try it fairly and impartially between the defendant on the one side and the Government on the other?
A. Yes, sir.
Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?
A. No, sir.
Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case on circumstantial evidence, where the penalty prescribed by law is that of death?
A. No; if the evidence is such that it would convince me beyond a reasonable doubt.
Mr. McGinn. We pass the juror for cause.
106 Mr. McGinn. We excuse Mr. Brodnex.

Ole Nelson, called as a juror, and having been duly sworn to answer questions, testified as follows:

Q. (By Mr. Sullivan.) Where do you reside?
A. At Dutch Harbor.
Q. How long have you resided there?
A. About eighteen months.
Q. Are you in anyone's employ?
A. Yes, sir; in the North American Commercial Company's.
Q. Been in their employ since you have been at Dutch Harbor?
A. Yes, sir.
Q. Where had you resided before coming to Dutch Harbor?
A. In Seattle.
Q. How long did you reside there?
A. About four months.
Q. Where did you reside before that?
A. At Cape Nome.
Q. How long had you been in Nome?
A. About three months.
Q. Where before that?
A. In Dawson.
Q. Where did you reside before going to Dawson?

A. In Paso Robles, California.
Q. What was your occupation in California?
A. I worked in the Sperry Flour Mill.
Q. Were you mining in Dawson and Cape Nome?
107 A. Yes, sir.
Q. Were you in any other business there?
A. No, sir.
Q. Are you a married man?
A. No, sir.
Q. Are you acquainted with Mr. McGinn?
A. No, sir.
Q. Are you acquainted with Mr. Wood, U. S. district attorney?
A. No, sir.
Q. Did you ever know Florence Sullivan, Con Sullivan, or P. J. Rooney?
A. No, sir.
Q. Are you acquainted with Judge Whipple?
A. Yes, sir.
Q. Are you acquainted with Mr. Sullivan, ex-deputy marshal?
A. Yes, sir.
Q. Did you ever hear Judge Whipple or Mr. Sullivan say anything about this case in any form?
A. Yes, sir.
Q. Did Sullivan relate to you what purported to be the facts in the case?
A. Well, I think he did.
Q. Have you heard anyone else discuss or speak about the case, in Dutch Harbor or Unalaska?
A. I saw Jackson the day after he came here.
Q. You mean Owen Jackson?
A. Yes, sir.
Q. Did he relate what purported to be the facts or any part of
108 the facts to you?
A. Yes, sir.
Q. Did anything that you heard from Mr. Sullivan or Mr. Jackson or from any other source create any impression upon your mind?
A. Not at all; no.
Q. Have you heard any other parties or party mention what purported to be the facts or any part of the facts?
A. Yes; some of the crew of the "Newport."
Q. You have heard pretty generally what purported to be the facts in this case?
A. I have.
Q. From what you have heard have you formed any opinion or impression as to the guilt or innocence of the defendant or the merits of the case?
A. No, sir.
Q. Have you ever had one on it?
A. No, sir.
Q. Have you ever been a sheriff, a deputy marshal, or police officer?
A. No, sir.

Q. How long have you known Mr. Sullivan?
A. Since '98.
Q. Has your acquaintance been intimate or otherwise?
A. Well, just happened to meet him.
Q. Where did you meet him?
A. Met him on the steamer coming from Portland to Skagway.
Q. When did you next meet him?
A. At Unalaska.

109 Q. Do you think, Mr. Nelson, that having heard all that you have heard in regard to this case that you could try it fairly and impartially, with no bias or feeling one way or the other in the matter?
A. No, sir; I have none.
Q. Have no sentiment or feeling about it?
A. Not the slightest.
Q. What you heard never created an impression upon your mind whatever, as to whether the defendant was guilty or innocent?
A. No, sir.
Mr. SULLIVAN. We pass the juror for cause.
Q. (By Mr. McGINN.) Do you know the defendant, Fred Hardy?
A. No, sir.
Q. Are you acquainted with Mr. Sullivan or Mr. Corson, his attorneys?
A. No, sir.
Q. You know nothing about the real facts in the case—the merits of the case?
A. Nothing more than what Jackson told me the day he came to Dutch Harbor.
Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is that of death?
A. No, sir.
Q. Are you opposed to capital punishment?
A. No, sir.

110 Q. Do you believe that any person who is convicted of the crime of murder should suffer the death penalty?
A. Yes; I do believe it.
Q. Do you feel that if you were sworn and accepted as a juror that you could return a verdict of guilty against a person on circumstantial evidence where the penalty was that of death?
A. If the evidence was strong enough.
Mr. McGINN. We pass the juror for cause.
Defense waives any peremptory challenge.
Prosecution waives any peremptory challenge.
Mr. McGinn then opened the case on behalf of the Government, and during the course of his statements Mr. Sullivan objected to the plaintiff arguing the case before the jury, in regard to the sentencing of a military prisoner, being sent to prison by a court who dishonorably discharged him, and in regard to forfeiture of pay.
The objection being sustained by the court,
Defense waives making a statement.

111 Mr. S. P. EDMONDS, a witness produced upon behalf of the Government, and having been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) What is your name?

A. S. P. Edmonds.

Q. What is your occupation?

A. An officer in the Revenue-Cutter Service.

Q. How long have you been such?

A. I have been in the service for nine years.

Q. Are you acquainted with Unimack Island, with its physical conditions, boundaries, and coast lines?

A. Yes, sir; somewhat.

Q. What is your present position upon the cutter "Manning?"

A. Navigating officer.

Q. And as such it becomes your duty to examine the charts?

A. Yes, sir; I make myself familiar with them.

Q. I will ask you who prepared this map?

A. I made the map as it is there.

Q. From what did you make it?

A. From all available data that I could reach. I took the general outline from a very small scale of map and from people who have been in that vicinity.

Q. Is that a correct map of the island?

A. That is as correct as is made at present from the best data available from official sources. That is all the available data I could get from anywhere.

Mr. MCGINN. If the court please, we now offer this map in evidence. (Plaintiff's Exhibit A.)

Mr. SULLIVAN. We have no objection.

112 Cross-examined:

Q. (By Mr. SULLIVAN.) Mr. Edmonds, what is this map? What do these red lines indicate on the map?

A. The red lines represent the approximate trail that Mr. Jackson traveled over; as near as anyone could get it.

Q. They represent as nearly as you could get it the approximate trail of Mr. Jackson?

A. Yes, sir.

Q. That you made from hearsay?

A. Yes, sir.

Q. This outer line is the coast line, is it?

A. The heavy line is the coast line and the blue lines represent the water and show which is the water side of the island.

Q. Did you travel over this section yourself?

A. No, sir; not at all.

Q. What part did you travel over?

A. We sailed almost entirely around it; we anchored in what is marked "Shoal Bay," and I went up to Cape Lapin in a small boat, and stayed there several hours, and walked over that part of it.

Q. You went from Shoal Bay to Cape Lapin in a rowboat?

A. Yes, sir.

Q. You did not travel over the land between the two points?

A. No, sir. Practically all the traveling on land I did was in the vicinity of Cape Lapin.

Q. How far from Cape Lapin did you travel on land?

A. Back inland, perhaps half a mile.

Q. What is the scale of this map?

113 A. Three-quarters of an inch to one mile.

Q. How far is it between Shoal Bay and Cape Lapin?

A. About six miles.

Q. When did you make this map?

A. I made it between the 23rd of August and the 30th.

Q. Where were you when you made it?

A. On board the "Manning."

Q. Where was she lying at that time?

A. Most of the time at Shoal Bay.

Q. How much did you finish after arriving at Dutch Harbor?

Mr. McGinn. We object to that as immaterial.

The Court. Objection overruled.

Mr. McGinn. Exception.

A. We put the scale on and the detail and the Barabara. I put this native camp on at the place marked Otter Point, and put Jackson's trail up to that point.

Q. That was all from what was told you?

A. Yes, sir; the trail was told me by Jackson and the camp was told me by Chas. Rosenberg.

Mr. Sullivan. That is all.

114 Herman Kotzschmar, Jr., a witness produced on behalf of the Government, and having been duly sworn, testified as follows:

Q. (By Mr. McGinn.) Mr. Kotzschmar, what is your business?

A. First assistant engineer of the Revenue-Cutter Service.

Q. How long have you been in the service?

A. Since the 13th of July, 1895.

Q. Are you a draughtsman?

A. I was a graduated mechanical engineer of recognized standing and studied draughting.

Q. What school did you graduate from?

A. From a school of mechanical engineering in Massachusetts.

Q. Do you know where Cape Lapin is?

A. Yes, sir.

Q. Have you ever been there?

A. Yes, sir.

Q. How recently?

A. On the 26th of August, 1901.

Q. Who accompanied you on the trip?

A. Mr. Edmonds, Mr. Richards, deputy marshal, George Aston and the men in the boat, and Surgeon Weeks and the boat's crew, and Owen Jackson, the witness.

Q. What did you do there that day?

A. We made a rough sketch, a reconnoissance, as you might call it, in the extremity of the cove at Cape Lapin.

Q. I will ask you to examine this map and state who prepared it.

A. I prepared it from data obtained on the ground.

Q. Please state whether this map or diagram correctly shows Cape Lapin or not.

115 A. It shows the cove at Cape Lapin.

Q. Does the map correctly show the creek which runs there?

A. Yes, sir.

Q. What do these various lines indicate?

(Witness gives explanation of what lines indicate.)

Q. What are these marks?

A. These marks indicate rocks and bo'lders that have fallen down from the cliff along the water's edge. These heavy lines are the shore lines and the finer lines are to indicate water. These red lines would show the distance and the direction of the compass bearing true north. The courses are all true north in a magnetic course; that would be about 19 degrees east of the true north. These courses are the true courses. They have all been taken with a ship's compass and then marked to the true north.

Q. What do these various dots indicate?

A. These dots are locations which were indicated by Mr. Jackson going and standing there, and I measured the distances and then taking the bearing. They were indicated in person by Mr. Jackson himself. He arrived there about 12 o'clock noon and stopped there until 2 or ten past 2. I made them in a note book and then put them on a chart. These indicate rocky hills which are running off here, which have broken cliffs running right direct to the water's edge. These are islands.

Q. Would it be possible to walk to these islands from the shore at low water?

A. There is another high island which is located about here,

116 which is a pinnacle rock about seventy-five feet high, I should judge; it is about north by east, one-half east about 160 yards. It would be located on the chart, but there is not paper enough. That red spot indicates the location of the rocks that were pointed out to me as the place where Rooney crawled under when he was killed.

Q. What does this line under here indicate?

A. Up to this point it indicates the tracks of Rooney and Jackson. This is where Jackson climbed the cliff to get up on to the high land. That indicates the location of the camp pointed out to me by Jackson where the camp was located; about twenty yards from the mouth of the creek. This indicates a spot east by south, about 6 yards from the boat, where Jackson told me Con Sullivan fell when shot. He was with me personally and pointed out the spots. This is the location of the site of the boat where Rooney was shot through the knee. This indicates where they had their boat, about twenty yards east of the mouth of the creek, as pointed out to me by Jackson, on the ground. This mark indicates the location of the graves where they are buried now. This is the course and direction, south of east, 86 yards from the boat.

Q. What does this mark indicate?

A. That indicates the point where Jackson located to me on the ground as where they picked up empty rifle shells. That is the point where Jackson stood on the ground and told me that Florence Sullivan was killed. That point is the location of two rocks—the only rocks.

They are peculiar rocks—shaped like monuments. It is where
117 Jackson told me he saw a man rise from the ground when he shot Sullivan. Jackson stood on the rock and I stood here myself. This mark shows the exact spot where Jackson stood and pointed out the spot to me. This indicates an old Barabara. This indicates the point on the ground where Jackson told me he stood on the ground and saw the man rise from the ground when he shot Sullivan.

Q. Did you measure these distances?

A. We took a steel tape and laid off fifty feet on the beach; we paced this distance off three times independently; 17 paces made 51 feet.

Q. Did each of you do that?

A. Yes, sir.

Q. What difference could there be in 100 yards; pursuing these methods and regular surveying according to your usual experience in surveying?

A. I should think there would be an error of less than three to five yards.

Q. How did you gauge these elevations?

A. I gauged them by my eye and then Mr. Edmonds would say what he judged the elevation to be and we compared them.

Q. Did you make any comparisons from official charts?

A. No, sir.

Q. These various circles with black lines running through them are places that Jackson indicated to you upon the ground by standing there and saying "This is the place," and this map correctly shows these places as located to you by Jackson?

A. Yes, sir.

118 Q. The highest elevation that you have here is 200 feet?

A. Yes, sir.

Q. What appreciable error, if any, could there be in that?

A. I believe it might be 10 feet either way. That was as close as we could judge it.

Mr. McGINN. We now offer this map in evidence.

Mr. SULLIVAN. We have no objection.

(Plaintiff's Exhibit "B.")

Cross-examined:

Q. (By Mr. SULLIVAN). And these elevations you speak of, were they marked in feet and black ink?

A. Yes, sir.

Q. The distances between the red lines are distances and not elevations?

A. They are distances in yards.

Q. You merely estimated as best you could the elevations?

A. Yes, sir. The points were located by Mr. Jackson.

Q. How large a cove is Jackson's Cove?

A. From the mouth of the cove to the sand bank is 60 yards. From the mouth of the cove to the point is 200 yards.

Q. Has the cove any name?

A. No, sir; it is a cove in Cape Lapin.

Q. How large a cape is Cape Lapin?

A. This is the extremity of the cape to the westward; it is about 6 miles around to Dublin Bay. It would be about 13 or 14 miles around it from shore line to shore line.

Q. In measuring these distances you measured them by stepping?

119 A. Yes, sir; by pacing them off. Jackson would stand upon the point and we would pace that distance off independently and then compare them. The comparisons were taken by going to the point with a boat compass because we had no surveying instruments of any kind; only a compass and steel tape.

Mr. SULLIVAN. If the court please, I notice a good many statements made here on the map, and I would ask the court to instruct the jury not to consider the statements on the map as proof in any case.

(Jury were so instructed by the court.)

Mr. SULLIVAN. That is all.

Mr. MCGINN. That is all.

(Examination of Mr. Kotzschmar closed.)

120 OWEN JACKSON, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) What is your name?

A. Owen Jackson.

Q. Where were you born?

A. Ireland.

Q. How old are you?

A. 50 years.

Q. Where do you reside at present?

A. In Idaho.

Q. What part of Idaho?

A. Shoshone County.

Q. Where were you during the months of March and April of this year?

A. In March I was in Seattle, Washington.

Q. When did you leave Seattle?

A. About the 16th of April; it might be later.

Q. On what boat?

A. On the "Lizzie Colby"—a fishing boat.

Q. For what point?

A. For Unimak Island.

Q. Who accompanied you on the trip, if anybody?

A. Con Sullivan, Florence Sullivan, and P. J. Rooney.

Q. Who was Con Sullivan?

A. He was a man, of course.

Q. How old a man was he?

A. About 50 years.

Q. How long had you known him?

A. Since the spring of '84.

121 Q. Who was Florence Sullivan?

A. The brother of Con Sullivan.

Q. How old a person was he?

A. Florence was 40.

Q. Who was P. J. Rooney?
A. A man from Seattle; I knew him in Idaho first.
Q. How old a man was he?
A. About 40 years.
Q. Did these people leave Seattle with you?
A. Yes, sir.
Q. Why did you leave?
Mr. SULLIVAN. We object to that as immaterial.
(No ruling.)
Q. Where did you go to?
A. To Unimak Island.
Q. What did you take along with you?
A. Provisions, clothing, guns, and mining tools.
Q. What kind of provisions did you take along with you?
A. Between clothing and everything—about twenty-five or twenty-six hundred pounds net weight; flour, meat, and clothing, being everything together; about twenty-five or twenty-six hundred pounds. We had about two thousand pounds of provisions.
Q. How much flour had you?
A. Eight hundred pounds of flour.
Q. How much bacon?
A. About two hundred pounds.
Q. How much salt pork?
A. About 50 pounds.
122 Q. How much rolled oats?
A. One hundred pounds.
Q. How much sugar?
A. One hundred pounds.
Q. Fruit?
A. About one hundred and fifty or two hundred pounds.
Q. How much coffee?
A. One of the big cans; about thirty pounds or maybe fifty.
Q. Bring any tea along?
A. Yes, sir; 25 pounds.
Q. Take any rice?
A. Fifty pounds of rice.
Q. Take any Irish stew?
A. Yes, sir; three cases.
Q. Milk?
A. Yes, sir; two cases.
Q. Beef? How many cases?
A. Two cases.
Q. Tomatoes?
A. One case.
Q. Potatoes?
A. Two or three boxes.
Q. Onions?
A. About twenty-five or thirty pounds.
Q. Take any candles?
A. A small box.
123 Q. Take any salt?

A. About twenty-five pounds.
Q. Butter?
A. About sixty pounds.
Q. Is that about a complete list of the provisions?
A. Yes, sir; as near as I can figure. We had clothing and stuff. I had about four suits of underwear; the rest of the boys had the same, and blankets and goods.
Q. How many blankets had you?
A. I had a heavy pair of blankets and a robe, and a quilt. Con Sullivan had a dark pair and a white pair; the two Sullivans slept together. Me and Rooney slept together.
Q. Did you have any other bedding?
A. We had mattresses along.
Q. What kind were they?
A. They were these double mattresses; pretty large.
Q. Did you bring any guns or ammunition with you?
A. We had a rifle, a shotgun, and two pistols.
Q. What kind of a rifle?
A. A 30–30 Marlin.
Q. What kind of a shotgun?
A. A double barrel.
Q. What kind of revolvers?
A. Forty-four Colt, and Con Sullivan had one forty-one Colt.
Q. Did you have any ammunition?
A. Yes, sir; lots of it.
Q. What kind?
124 A. Cartridges for the rifle, also for the gun, and also for the pistol.
Q. What kind did you have for the rifle?
A. Thirty-thirty.
Q. Do you remember the particular kind?
A. U. M. C.
Q. What kind of ammunition for the shotgun?
A. Some of it was buckshot and some of it was fine shot.
Q. What kind of shells?
A. A kind of dark-colored paper cartridge.
Q. Was it a paper shell?
A. Yes, sir, a paper shell.
Q. You say you left Seattle about the 16th day of April?
A. Yes, sir; it may be a day or two later; I am not certain.
Q. When did you move to Cape Lapin?
A. About the 16th of May; it may be a day or two later.
Q. What did you do after going there?
A. We pitched our tent up on the creek and started prospecting the next day. We went to the head of the creek. We prospected eight or ten days; maybe more.
Q. Where is Cape Lapin?
A. On Unimak Island.
Q. On what coast?
A. On the Behring Sea side.
Q. On the east or west side?

A. I would call it the east side.

(Jackson is shown map.)

125 Q. Mr. Jackson, I will ask you to examine this map and state the location of Cape Lapin on the map.

A. Cape Lapin is where that cove is. Here is Cape Lapin, and here is this cove where I came around.

Q. I just want you to point out on this map where Cape Lapin is.

A. It is here.

Q. Is that where you arrived on or about the 16th day of May this year?

A. Yes, sir.

Q. Where did you pitch your tent; did you pitch it at Cape Lapin?

A. Yes, sir.

Q. When did you leave the boat "Lizzie Colby?"

A. Somewhere about the 16th of May.

Q. What time of the day?

A. About three o'clock.

Q. What did you do; how did you come ashore?

A. We came ashore in dories; we had provisions, clothing and stuff, cooking utensils, mining tools, picks, and shovels.

Q. A complete outfit?

A. Yes, sir.

Q. Where did you land that?

A. We landed it on Cape Lapin.

Q. What did you do with it?

A. We packed it up a ways on the creek and piled it up there.

Q. How long did you remain in that immediate vicinity?

A. It may be about eight or ten days; I am not certain.

Q. Could it be more than ten days?

126 A. I am not certain; it might be more.

Q. Could it be fifteen days?

A. No, sir.

Q. State as nearly as you can the exact number of days that you stayed in the vicinity of Cape Lapin.

A. It may be about ten or twelve days.

Q. What did you do around there?

A. We prospected around there for quite a while.

Q. When you left there, where did you go?

A. We went about twenty miles northeast up the Behring Sea, towards False Pass.

Q. Say what you did up there.

A. We prospected around there for quite a while; we heard there was some good copper leads near the volcano and we did a lot of running around there.

Q. When you left Cape Lapin did you bring your provisions and outfit with you?

A. Yes, sir.

Q. When you arrived thirty miles from there, northeastward, what did you do?

A. We pitched our tent there; we remained there ten or twelve days; I am not certain.

Q. What did you do there?

A. We prospected around there; we could not find anything, so we made up our minds that we would go back to Unimak Pass and go to Nome or Valdez or somewhere.

Q. What did you do?

127 A. We took about half of the provisions along and came back to Cape Lapin. It was about the 6th of June as near as I can remember.

Q. As near as you are able to state, what was the date that you left your camp there for Cape Lapin?

A. As near as I can remember, about the 6th.

Q. What makes you think it was the 6th of June?

A. I do not know.

Q. What kind of provisions did you put in your boat?

A. I should think there was about twelve or thirteen hundred pounds of it.

Q. What was the nature of the stuff that you had in the boat?

A. There was three clothing sacks in it; there was two large satchels and a small hand grip in it.

Q. You say three clothing sacks and three hand satchels?

A. Yes, sir; we had some provisions in it; I do not know how much. We had the guns in it.

Q. What kind?

A. Rifle, pistols, and shotgun. Mine was a .44 Colts; it was in my satchel.

Q. Yours was a .44?

A. Yes, sir.

Q. (Mr. McGinn exhibits pistol to Jackson.) Whose is that?

A. It is mine.

Q. How long have you had it?

A. About five years.

Q. Where did you get it?

128 A. In Wallace, Idaho.

Mr. McGINN. We now offer this pistol in evidence.

Mr. SULLIVAN. No objection.

The COURT. It shall be marked "Plaintiff's Exhibit C."

Q. Mr. Jackson, I will ask you to examine this pistol and state as to whether or not you have seen it before.

A. I saw one like this with Con Sullivan, but I would not swear to this pistol. I never had it in my hands. Con's was a .41.

Q. What kind is that?

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

A. It is a .41.

Mr. McGINN. We now offer this pistol in evidence.

Mr. SULLIVAN. No objection.

The COURT. It shall be marked "Plaintiff's Exhibit D."

Q. Did you ever see this scabbard?

A. Yes, sir.

Q. Whose is it?

A. Mine.
Q. How long have you had it?
A. About five years.
Q. Are you able to positively identify that scabbard?
A. Yes, sir.
Q. By what?
A. By the hook on it.
Mr. McGINN. We now offer this scabbard in evidence.
Mr. SULLIVAN. We have no objection.
The COURT. It shall be marked "Plaintiff's Exhibit E."
129 Q. Mr. Jackson, state what this is.
A. It is a miner's candlestick.
Q. Did you ever see it before?
A. Yes, sir.
Q. When did you first see it?
A. I first saw it in Seattle.
Q. Who had it?
A. Con Sullivan.
Q. When did you next see it?
A. Next time he was showing it to the captain of the "Colby."
Q. In whose possession was it?
A. Con Sullivan's.
Q. When did you next see it?
A. We used to use it in camp at night.
Q. At what camp?
A. At Camp Lapin, and also above at the other camp.
Q. Was this in the lot of stuff that you brought down in the boat?
A. Yes, sir.
Q. Do you know positively that it was there?
A. Yes, sir.
Q. When did you next see it?
A. Here in Unalaska, in the possession of the marshal.
Mr. McGINN. We now offer this candlestick in evidence.
Mr. SULLIVAN. No objection.
The COURT. Let it be marked "Plaintiff's Exhibit F."
Q. Examine that pouch and state whether you have ever seen it before or not.
A. Yes, sir.
130 Q. To whom does that belong?
A. I think it was in my satchel.
Q. Did it belong to you?
A. Yes; I had five or six.
Q. Where did you get them?
A. I had five or six of them in Idaho and one I got in Dawson in '97.
Q. When did you last see these? Did you have it with you at Lapin?
A. Yes, sir; I had. It was in my satchel.
Q. Was it in your satchel that went down with the first boat load of stuff?
A. Yes, sir.
Q. When did you last see it before taking that trip?

A. This spring, when I was fixing up the grip.
Q. When did you next see it?
A. On board the "Manning."
Q. What was in it?
A. There seemed to be money in it.
Q. In whose possession was it?
A. It was in Mr. Sullivan's possession.
Q. J. O'Sullivan, ex-deputy marshal here?
A. I believe that is the name; I am not certain.
Mr. McGINN. We now offer this poke in evidence.
Mr. SULLIVAN. No objection.
The COURT. Mr. Clerk, you will mark that "Plaintiff's Exhibit G."

131 Q. Examine that pin.
A. I saw it before.
Q. To whom does it belong?
A. To me.
Q. Where did you get it?
A. I got it in Pennsylvania.
Q. How long have you owned it?
A. About five years.
Q. Was that amongst your stuff at Lapin?
A. Yes, sir.
Q. Where did you have it?
A. It was in my satchel.
Q. Did you see it at Cape Lapin?
A. No, sir.
Q. When had you seen it prior to that time?
A. I saw it on the "Colby" when I was coming up.
Q. When did you next see it?
A. With Marshal Sullivan. I think it was at the place called "Dory Harbor" on board the "Manning."
Q. And you are able to swear positively that this is yours?
A. Yes; that is mine.
Mr. McGINN. We now offer this pin in evidence.
Mr. SULLIVAN. No objection.
The COURT. Let it be marked "Plaintiff's Exhibit H."
Q. Examine that watch, and state whether you have seen it before or not.
A. Yes, sir; I saw the watch before.

132 Q. Where did you see it?
A. I saw it on Con Sullivan's person on the day that he got killed.
Q. Do you know how long he had it?
A. A good many years.
Q. How many years would you say?
A. I could not say how long.
Q. Did he have this watch on the "Lizzie Colby?"
A. He did.
Q. During the time that you were camped at Lapin, did he have the watch?
A. Yes, sir.

Q. You say that he had this watch on him on the day that he got killed?

A. Yes, sir.

Q. Do you remember seeing it that day?

A. I do.

Q. You are able to identify the watch, are you, as the watch of Con Sullivam?

A. Yes, sir.

Mr. McGINN. We now offer this watch in evidence.

Mr. SULLIVAN. We have no objection.

The COURT. Let it be marked "Plaintiff's Exhibit I."

Q. Look at that watch, and state whether you have seen it before or not.

A. Yes, sir; I saw the watch before.

Q. To whom did it belong?

133 A. That watch belongs to Rooney.

Q. When did you first see the watch?

A. I saw it for five or six years, or more.

Q. Upon whom?

A. P. J. Rooney.

Q. Did he have this watch on him aboard the "Lizzie Colby?"

A. He did.

Q. Did he have it at Cape Lapin?

A. He did.

Q. At the camp above Lapin?

A. He did.

Q. Do you remember whether or not you saw that watch on Rooney on the 7th day of June?

A. Yes, sir.

Q. You are able to positively identify the watch as belonging to P. J. Rooney?

A. Yes, sir.

Q. Have you ever seen that chain before?

A. Yes, sir; it is the same he has been wearing on him all the time.

Q. To whom did it belong?

A. To Rooney.

Q. During the time that you saw the watch was that the chain that was attached to the watch?

A. Yes, sir.

Mr. McGINN. We now offer the watch in evidence.

Mr. SULLIVAN. No objection.

The COURT. It shall be marked "Plaintiff's Exhibit J."

134 Q. Examine that chain and state whether or not you have ever seen it before.

A. It looks very much like a chain that Con Sullivan had, but it is all busted up; he had a big locket on his chain. I could not swear to it.

Q. You do not know whether that is the chain or not?

A. No, sir.

Q. It looks very much like the chain on his watch, does it?

A. It does; yes, sir. It looks very much like the chain that he had.

Q. With the exception of the locket, is there any difference in this chain?

A. No, sir; there is no difference.

Mr. SULLIVAN. We have no objection.

Mr. MCGINN. We now offer this chain in evidence.

The COURT. Let it be marked "Plaintiff's Exhibit K."

Q. Look at that book and state whether you have ever seen it before or not.

A. We had books like them.

Q. Do you know whether or not this is one of the books?

A. It looks very much like them.

Q. Did you have books of this description?

A. Yes, sir.

Q. Would you swear to that book?

A. No, sir.

Q. I will ask you to examine any of these books and state whether you have seen them before or not?

135 A. I saw this one before, but it is all torn out; I had my sister's address and my brother's address in that; I am pretty certain that that is the book.

Q. Are you willing to identify that?

A. Yes, sir; that book was in my satchel.

Mr. MCGINN. We now offer this book in evidence.

Mr. SULLIVAN. We have no objection.

The COURT. Let it be marked "Plaintiff's Exhibit L."

Q. I will ask you to examine those cartridges and state whether or not they are the same kind that you had with you when you left Seattle?

A. Yes, sir; they are the same kind.

Q. Did you ever see that bottle before?

A. Yes, sir.

Q. Where did you see it?

A. I saw it where it had been pulled out of a hole in the cabin.

Q. Where was that cabin?

A. On Unimak Island, a little way up from Shoal Bay.

Q. Who was there with you when you were there?

A. Marshal Richards and George Aston and Mr. McGinn and myself.

Q. Where did you find this bottle?

A. Mr. Aston pulled it out of the hole where he got the guns.

Q. What part of the house was it?

A. Under the eave of the house on the outside just before you go into the cabin.

136 Mr. MCGINN. We now desire to offer this bottle in evidence.

Mr. SULLIVAN. We have no objection.

The COURT. It shall be marked "Plaintiff's Exhibit M."

Q. I will ask you to examine these shells and state whether or not you have ever seen them before.

A. Yes, sir; I saw the shells.

Q. Are they the same shells that you brought up with you from Seattle, or shells of a similar kind?

A. Yes, sir; the same kind.

Q. Where did you see these shells before?

A. I saw them up where we saw the rifle; where we found the rifle and cartridges.

Q. On what day?

A. I think it was on the 26th—the same evening that we found the others.

Q. When did you find them?

A. They were pulled out of the same place—out of the hole beside the door.

Q. Were the shells you brought from Seattle the same kind and color?

A. Yes, sir.

Q. How many did you bring?

A. I do not remember how many we had. I know we had a whole lot of ammunition.

Mr. McGINN. We now offer these shells in evidence.

Mr. SULLIVAN. No objection.

The COURT. Let them be marked "Plaintiff's Exhibit N."

137 Q. Examine that brush and state whether you ever saw it before.

A. I could not swear to it; I had a brush something like that.

Q. I believe you stated in your testimony that when you left on the morning of the 6th for Cape Lapin, that you had in the boat two valises and a small hand satchel.

A. Yes, sir.

Q. I will ask you to examine this satchel and state whether or not you ever saw it before.

A. Yes, sir; I saw it before.

Q. Whose was it?

A. This was mine.

Q. How are you able to identify that satchel as yours?

A. I have had that satchel fifteen years.

Q. How did the satchel you had correspond in size with that satchel?

A. That corresponds all right in size.

Q. Are they about the same size?

A. Yes, sir.

Mr. McGINN. We now offer this satchel in evidence.

Mr. SULLIVAN. We have no objection.

The COURT. Mark it "Plaintiff's Exhibit O."

Q. You say you had that satchel in your boat?

A. Yes, sir.

Q. When did you next see that satchel after that?

A. The next time was over at Cape Lapin, when we were over with the "Manning."

Q. On what day was that?

A. It was on the 27th of August, I believe.

138 Q. Of what year?

A. 1901.

Q. Who was present at that time?

A. Marshal Richards called me down off the hill and said he had found a satchel.

Q. Examine that satchel and state whether or not you have seen it before?

A. Yes, sir; I saw it before.

Q. To whom did it belong?

A. To one of the Sullivans; I don't know which.
Q. Is that the hand satchel you spoke of?
A. Yes, sir.
Mr. McGINN. We now offer this hand satchel in evidence.
Mr. SULLIVAN. No objection.
The COURT. Let it be marked "Plaintiff's Exhibit P."
Q. I will ask you to examine this valise.
A. This is a valise that the Sullivan boys had. I do not know which one it belonged to.
Q. Are you positive that is the satchel they had?
A. Yes, sir.
Mr. McGINN. We now offer this valise in evidence.
Mr. SULLIVAN. We do not object.
The COURT. It shall be marked "Plaintiff's Exhibit Q."
Q. On or about the 6th of June, I believe you stated, that you had the two valises with you?
A. Yes, sir.
Q. Was that one of the valises?
A. Yes, sir.
139 Q. How does it compare?
A. There were no holes in it.
Q. Where did you next see this valise after the 6th of June?
A. At Cape Lapin.
Q. When?
A. On the 27th of August.
Q. Who was present?
A. Mr. Richards called me down off the hill and he and Mr. Aston were the only ones that were there.
Q. Examine that boot and state where you last saw it.
A. It looks very much like a boot that Rooney had on; when I last saw it was on the 6th of June.
Q. Did you not see it after that?
A. Yes, sir.
Q. When?
A. Someone picked it up on the beach and showed it to me; I examined it and said it was Rooney's boot.
Q. What made you think so?
A. On account of the size; Rooney had his name written with a thick blue pencil on the inside of the boot, and when I saw how the boot was cut with a knife I knew it was done to cut his name out.
Mr. McGINN. We now offer this boot in evidence.
Mr. SULLIVAN. We have no objections.
The COURT. Let it be marked "Plaintiff's Exhibit R."
Q. Examine these clothes.
A. This is a suit of clothes that Rooney had on him when he left Seattle.
140 Q. To whom did it belong?
A. To P. J. Rooney.
Q. Did he wear this suit of clothes when coming up on the boat?
A. No, sir.
Q. Are you able to identify that as belonging to Rooney?
A. Yes, sir.

Q. Where did you last see him with these clothes?
A. On the boat; the next place that I saw them was up in the jail.
Q. How long ago?
A. About the 28th or 29th of July.
Mr. McGINN. We now offer these clothes in evidence.
Mr. SULLIVAN. No objection.
The COURT. Let them be marked "Plaintiff's Exhibit S."
Q. Examine those shoes. To whom do they belong?
A. To P. J. Rooney.
Q. When did you last see him with them?
A. On the 6th of June.
Q. Where?
A. About twenty miles above Cape Lapin when we camped down there.
Q. Was he wearing them at the time?
A. Yes, sir.
Q. Did he have these shoes on when he was in the boat?
A. No, sir; gum boots.
Q. When did you next see them?
A. Up in the jail.
Mr. McGINN. We now offer these shoes in evidence.
Mr. SULLIVAN. No objection.
141 The COURT. Let them be marked "Plaintiff's Exhibit T."
Q. Examine that slicker.
A. We had three coats along like this; two large ones and one small one; this looks very much like one of them.
Mr. McGINN. We now offer this slicker in evidence.
Mr. SULLIVAN. We do not object.
The COURT. Let it be marked "Plaintiff's Exhibit U."
Q. Examine that shirt.
A. I could not tell who owned it; Sullivans had a lot of shirts this kind, but I do not remember that shirt.
Q. Examine that hat.
A. Rooney had a hat like that; one he bought in Seattle.
Q. Did you ever see him wearing the hat?
A. Yes, sir.
Mr. McGINN. We will offer the hat in evidence.
Mr. SULLIVAN. No objection.
The COURT. That will be "Plaintiff's Exhibit V."
Q. Examine that suit of underwear and state whether or not you have ever seen it before.
A. It looks very much like underwear that Rooney had.
Q. Did Rooney have underwear of the same make and same material?
A. Yes, sir.
Q. You can swear that he had some similar to this?
A. Yes, sir.
Mr. McGINN. We now offer the underwear in evidence.
Mr. SULLIVAN. No objection.
The COURT. That will be "Plaintiff's Exhibit W."
Q. Look at this underwear and state whether or not you could
142 identify them. Examine those pants and state whether you ever saw them before.

A. They look like pants that Rooney had on.

Q. Did Rooney wear pants of similar material to this?

A. Yes, sir; he had corduroy pants on on the day that he was killed. I found the pants about one hundred and fifty yards from where he was found, on Cape Lapin.

Mr. McGINN. I now offer these pants in evidence.

Mr. SULLIVAN. No objection.

The COURT. "Plaintiff's Exhibit X."

Q. Examine that and state whether or not you can say what it was.

A. It was a piece of Con Sullivan's coat—the one that he was wearing when he was killed.

Q. Examine that and say if you know what it is.

A. That is a part of the same coat Con Sullivan had on the day he was killed.

Mr. McGINN. I offer this coat as evidence.

Mr. SULLIVAN. No objection.

The COURT. Let it be marked "Plaintiff's Exhibit Y."

Q. Examine that shirt and say whether or not you have seen it before.

A. I saw a shirt on Con Sullivan that looked very much like this.

Q. Did Con Sullivan wear a blue shirt?

A. Yes, sir; he always wore them.

Q. What kind did Rooney have on?

A. A kind of a light shirt.

Mr. McGINN. I offer this shirt in evidence.

Mr. SULLIVAN. No objection.

143 The COURT. That will be "Plaintiff's Exhibit Z."

Q. Examine those blankets and state whether or not you have seen them before.

A. They had a lot of blankets, but their blankets were all clean. These are badly used up.

Q. Did the blankets of the Sullivans correspond in material and color with these blankets?

A. Yes, sir.

Mr. McGINN. I now offer these blankets in evidence.

Mr. SULLIVAN. No objection.

The COURT. "Plaintiff's Exhibit AA."

Q. Examine that knife and state whether or not you have seen it before.

A. We had a good many knives which looked like this.

Q. How many did you bring along; do you remember?

A. We must have had five or six; I do not know. I think that Rooney had a knife similar to that.

Q. Examine that knife and state whether you had any like it.

A. Yes, sir; I had a knife on me about like that.

Q. Do you know whether that is the knife?

A. I could not swear to it.

Q. Examine that knife and state whether you ever saw it before.

A. I could not say.

Q. Examine this razor?

A. We had two or three white razors

Q. Did you have any that corresponded with this?

A. Yes, sir.

Q. To whom did this belong?

144 A. To Con Sullivan; he showed me that on the boat.

Q. Are you able to identify that?

A. Yes, sir; by Phil O'Rouke's name on it.

Mr. McGINN. I offer these things in evidence.

Mr. SULLIVAN. I have no objection.

The COURT. "Plaintiff's Exhibit BB."

Q. Examine that vest and state whether or not you are able to say to whom it belonged.

A. Rooney wore clothes similar to these coming up on the boat and also had it on him the day that he was killed.

Q. When did you last see this vest on Rooney?

A. On the 6th day of June, this year.

A. When did you next see this vest?

A. The next place was at Shaw Bay, on the 26th or 27th of last month.

Q. Who was with you at the time?

A. There was Mr. Richards, George Aston, Mr. McGinn, and myself.

Q. Where did you find this, then?

A. About 20 or 30 feet from the cabin, where it was hidden in the grass.

Q. Whose cabin was that?

A. It was Charley Rosenberg's, I believe.

Q. Is that the same cabin that you testified you found the rifle at?

A. Yes, sir.

Q. Was this vest in the cabin?

A. No, sir.

145 Q. How far away from the cabin?

A. About thirty feet away from the cabin.

Q. In plain sight?

A. No, sir.

Q. Where was it?

A. In the grass.

Q. What kind of a rifle did you have?

A. A 30–30 Marlin.

Q. What kind of a shotgun?

A. A double-barrelled shotgun.

Q. What make?

A. I can not say what make it was.

Q. What size shell? What size barrel?

A. Some of the shot was number ten.

Q. What size bore was the gun?

A. I do not know; about an inch or so.

Q. I will ask you to examine that shotgun and state whether you have seen it before or not.

A. Sullivans had a shotgun like this.

Q. How does that correspond with the bore of the shotgun that Sullivans had?

A. Exactly.

Q. Are you able to identify that as the gun they had?

A. To the best of my opinion it is the gun they had; I never shot it myself.

Q. When did you last see the shotgun?

A. On the 6th of June, when we took it down to Cape Lapin.

146 Q. When did you next see this gun?

A. I saw it on the 26th of last month.

Q. Where?

A. A little above Shaw Bay, where it was pulled out of a cabin there.

Q. Whose cabin?

A. Charley Rosenberg's.

Q. By whom was it pulled out?

A. George Aston.

Mr. McGinn. We now offer this shotgun in evidence.

Mr. Sullivan. No objection.

The Court. That will be "Plaintiff's Exhibit DD."

Q. I will ask you to examine this rifle and state whether or not you have seen it before.

A. We had a rifle exactly like this.

Q. What make is the rifle?

A. A 30–30 Marlin. The stock has been all scraped.

Q. Does that correspond with the size and appearance of the rifle that you had?

A. Yes, sir; it does correspond.

Q. To whom did the rifle belong?

A. It belonged to me; I bought it.

Q. That was your own property?

A. Yes, sir.

Mr. McGinn. We now offer this rifle in evidence.

Mr. Sullivan. No objection.

The Court. Let it be marked "Plaintiff's Exhibit EE."

147 Q. Now, I believe you testified that you left for Cape Lapin on the morning of the 6th of June?

A. Yes, sir.

Q. That you put about half of your provisions into the boat, about twelve or thirteen hundred pounds, and that it consisted of the stuff that you related—valises, clothing, etc.?

A. We came down to Cape Lapin about 11 o'clock and came ashore and unloaded; put up our tent and put the goods all in it, had lunch, and started back for the balance of our stuff. We had our dinner and left there at 1 o'clock and started back up about twenty miles, to where we moved part of our goods from. We expected to come back that night. When we got ashore it was a pretty bad place to land, and the surf was pretty bad. We left the boat about half a mile down further. We packed our stuff down to it, so that we could get at it next morning.

Q. Was that on the night of the 6th?

A. Yes, sir.

Q. Where did you stay on the night of the 6th?

A. We carried our goods to the boat. Next morning we started down for Cape Lapin. We got down there about eleven or half past eleven o'clock. When we were coming in, Rooney hollered, "There is two men going up the creek with packs." I looked around and only saw one man. My back was to them. I was rowing. I only saw one man. Con was in the bow of the boat and hollered, "Pull in quick; the tent

is down and everything gone." We pulled in quick, and found
148 that there was not a thing left there. The tent was lying down and we could see nothing. Three of started up the creek in the direction we saw the men going.

Q. I will ask you to examine this map, Mr. Jackson, and state whether or not you are able to say whether this is a correct outline of the coast there at Cape Lapin; Jackson's Cove. State whether or not this is the coast line here.

A. Yes, sir.

Q. Are you able to say whether or not this is a correct coast line of this cove there at Cape Lapin?

A. Yes, sir. This resembles it very much; the point is not quite as sharp as that; that is all the difference I see to it.

Q. There is a creek running in there?

A. Yes, sir.

Q. You say that you landed where? This is the creek; where did you land?

A. About here, at these two red spots.

Q. Where did you pitch your tent?

A. The tent was very close to the boat.

Q. There is where you landed your boat on the 7th day of June?

A. Yes, sir.

Q. You say that you left Rooney in charge of the boat, and that you, Con Sullivan and Florence Sullivan, went up this creek to where you saw the man going up?

A. We started up here and I took across in this direction and Florence went to the cabin and Con and I went on down this way
149 and he followed him. I wanted to go down here to see whether I could see a dory. I could see nothing.

Q. How long did you search there?

A. About half an hour. Me and Con came back and we met Florence at the cabin; I should judge about here; we had a talk among ourselves and Florence said this little grip of theirs had valuable papers in it. I said, "Had you any money in it?" They said, "No." It was a great loss to them and was gone. We started up the creek on this side. Florence started down in this direction toward—I have not got my glasses and cannot make it out.

Q. What direction did Florence go?

A. He started around toward this; you come down along here somewhere and we was away up and saw him on this little island; we was up the creek and came on down and saw him. I cannot see the place where he was standing.

Q. Mr. Jackson, were you at Cape Lapin when Mr. Edmonds and Mr. Kotzschmar measured the distances that were pointed out to them on or about the 27th day of August?

A. Yes, sir; I showed them as near as I could.

Q. Did you show them the position that Florence was in at the time that you last saw him?

A. Yes, sir; I showed them where I saw him coming from that little island.

Q. Did you show them at that time where you were standing?

A. Yes, sir.

Q. Did you show them where you landed the boat?
150 A. I did.
Q. About where Con Sullivan was killed?
A. I did.
Q. Where you last saw Rooney?
A. Yes, sir.
Q. Where you climbed over the cliff?
A. Yes, sir.
Q. Did you show them where you saw this man standing behind the rock?
A. Yes, sir; I did.
Q. Where some empty cartridges were found?
A. Yes, sir.
Q. Were the positions that you pointed out to them at that time the true and correct positions where these people were on the 6th day of June?
A. Yes, sir; as near as I could possibly show them the places.
Q. I wish you would go on and state to the jury——
Q. You say that you saw Florence Sullivan on that island?
The COURT. Gentlemen, it is now 5.30, and we will now adjourn until seven o'clock this evening.
The COURT. Gentlemen of the jury, you will be kept together at all times until this case is concluded by your verdict. You will go in charge of the marshal to your meals, and you will go in charge of the marshal to your rooms. You will be kept in the same room; allowed to
151 sleep in one large room together. During the recess of the court and at all other times when you are allowed to go out you will remember this: That you are not allowed to talk in any manner about this case; you are to have no communication with anyone else except the marshal; you are not to discuss this case amongst yourselves; you will not undertake to reach a verdict until the case is finally given to you for your consideration. You will go now in charge of the marshal and return here at seven o'clock this evening.

UNALASKA, ALASKA, SEVEN O'CLOCK P. M.
Tuesday, September 3rd, 1901.

All present. Proceedings resumed pursuant to adjournment.

Mr. OWEN JACKSON resumes his testimony.

Q. (By Mr. MCGINN.) Have you seen these books before?
A. Yes, sir.
Q. Have you seen that book over there before?
A. Yes, sir.
Q. To whom do these books belong?
A. One belongs to me, one to Sullivans, and one to Rooney.
Q. Which belongs to you?
A. I can not tell one from the other.
Q. I ask you to examine these hats and state whether you are able to identify them.
A. There was no one wore low hats but Con. He wore low-crown hats like these.

152 Q. Did you ever see him wear that hat?

A. I saw him with a hat like that on.

Q. I will ask you to examine that and state if you know what it is.

A. It is a case that Con Sullivan had his shotgun in.

Q. I ask you to examine that slicker and state whether or not you are able to identify it as the property of the Sullivans, Rooney, or yourself.

A. We had three like these.

Q. Where did you keep the slickers?

A. We had them in our sacks.

Q. I will ask you to examine that mit and state whether you are able to identify it.

A. I saw mittens like these with Con Sullivan.

Q. I will ask you to examine that stone and state whether or not you can identify it as the property of either of the Sullivans, Rooney, or yourself.

A. I saw one like this. Florence Sullivan had it for honing a razor.

Q. I will ask you to examine those glasses and state whether or not they were the property of the Sullivans, Rooney, or yourself.

A. Me and Con and Rooney had a pair of these and Florence had a pair of different color.

Q. Where did you keep these glasses?

A. We kept them in our satchels.

153 Q. I will ask you to examine these pants and state whether or they were the property of Sullivans, Rooney, or yourself.

A. I saw a pair of pants like these on Con Sullivan.

Q. The same color?

A. Yes, sir; I saw him wear them in Seattle.

Q. Are you able to identify these socks as the property of either of the Sullivans, Rooney, or yourself?

A. I saw socks like these on the Sullivan boys.

Q. Striped in the same way?

A. Yes, sir; they had two or three different kinds of socks.

Q. I will ask you to examine that ball of twine and state whether or not you had a ball of twine like that.

A. Yes, sir.

Q. How many had you?

A. I do not think that we had any more than the one.

Q. I will ask you to examine that sou'wester.

A. We had a couple similar to that.

Q. Do you remember the color of the lining?

A. No, sir; I do not.

Q. Examine these shirts and state whether or not you are able to identify them as the property of Rooney, Sullivans, or yourself.

A. I saw Florence on the way up wearing a shirt similar to this. I do not remember seeing any on Con.

Q. He wore these coming up on the boat?

A. Yes, sir.

A. How many pair of rubber boots did you take along on that trip?

A. I had two pair and they had a pair apiece.

Q. Examine these shoes and state whether or not you are able to identify them.

154 A. These belonged to one of the Sullivans, but to which one I do not know.

Q. You are positive that they belonged to one of the Sullivans?

A. Yes, sir.

Q. When did you last see these shoes?

A. We had not these shoes on for quite a while; we wore heavier shoes.

Q. When did you see these shoes with the Sullivans; at any time?

A. I saw them on the "Colby" when we were coming up.

Q. State whether you had a tape line in your outfit.

A. We had two tape lines.

Q. Were the tape lines which you had similar to that?

A. Yes, sir; they had one and I had one.

Q. Examine that shirt and state whether you are able to indentify that or not.

A. This kind of a shirt I never remember seeing with any of the party; we may have had it in the sacks, but I do not remember seeing it.

Q. Examine that book and state whether or not you have ever seen it before.

A. We had this kind along, but whether they are the ones or not, I do not know.

Q. These beads; who had them along?

A. Florence Sullivan and Con Sullivan. I shot an eagle one day and got these off—eagle's talons. Florence killed an eagle.

Q. You are able to identify these as the property of Sullivans?

A. Yes, sir; I am certain.

155 Q. Examine that shirt and say whether or not you are able to identify that as the property of any of the party.

A. Rooney had one something similar to this.

Q. Did you see him wearing it?

A. Yes, sir; he had one similar to that in color.

Q. Examine that and state what it is.

A. That is a compass that Con Sullivan bought in Seattle; I was along with him when he bought it.

Q. Did you have any hair clippers along with you?

A. Yes, sir.

Q. How many?

A. Two pair; they had a pair and I had a pair.

Q. Examine that hair clipper and state whether or not it corresponds in size to the one you had.

A. Yes, sir; it is the same kind we had. I do not know the make.

Q. To whom did the hair clippers belong?

A. Sullivans had a pair and I had a pair.

Q. I will ask you to examine these goods I have laid out here, and state whether or not you are able to identify any of it as the property of any of the party.

A. I had a lot of lead pencils in my satchel.

Q. Did you ever see that knife before?

A. Yes, sir; I think I did.

Q. Are you able to identify that?

A. We had knives similar to this along with us, but I could not say if they are the ones. We had knives like them along with us, and this one seems to be the one which I had in my sack since I came down from the Kuskoquim.

156 Q. Examine those scissors and state whether or not you had scissors corresponding with those in your outfit.

A. The Sullivans had some; I remember the party having three white-handled razors; I would not know any of the razors, but he showed me one Pat O'Rouke made him a present of.

Q. Did you ever see that book before?

A. I do not remember seeing it; they had lots of things that I did not see.

Q. Do you know whether or not they had a dictionary along with them?

A. I do not.

Q. Examine that book and state whether you saw it before or not.

A. If I remember right I think Rooney had one.

Q. Examine that shaving brush and state whether you are able to identify that or not.

A. Yes, sir; this belonged to Florence Sullivan; I never saw one like it before; I took particular notice of it on the boat coming up.

Q. Is this the one that he used?

A. Yes, sir.

Q. Examine that glove and state whether or not you are able to identify it as the property of either of the Sullivans, Rooney, or yourself.

A. I saw some similar to that with Con.

Q. Did you ever see that chain before?

A. Well, I thought I saw that with Rooney, but I would not swear that I saw it; I thought I saw that with him in Seattle.

Q. You had thread along on the trip?

157 A. Yes, sir.

Q. Cartridges?

A. Yes, sir.

Q. What size?

A. 44 and 41.

Q. Did you know the make of them?

A. No, sir; I never saw them; I saw Con firing them.

Q. Are you able to identify that comb as the property of either of the Sullivans, Rooney, or yourself?

A. We had combs in little cases like that; I would not be able to identify them.

Q. Did you ever see these scissors before?

A. Sullivans had some like them; I do not know whether these are the ones, because I never had them in my hand; I know they had scissors.

Q. Examine that buckskin sack and state whether or not you are able to identify it.

A. I had half a dozen of these buckskin sacks in the satchel; this one has been cut up; I saw one on Con's watch.

Q. Are you able to identify these pincers?

A. Yes, sir; they are the ones Sullivans had; I saw them using them several times on the boat.

Mr. McGINN. I now offer this bag of stuff to go as an exhibit.

Mr. SULLIVAN. No objections.

The COURT. Let it be marked "Plaintiff's Exhibit FF."

158 Q. Examine that blanket and state whether or not you are able identify that as the property either of the Sullivans, Rooney, or yourself.

A. The Sullivans had a white pair of blankets like them. It is my opinion that they are the blankets they had.

Q. Examine that jumper, and state whether or not you are able to identify it.

A. We had overalls along and the Sullivans were the ones knew the overalls; I do not know whether the Sullivans had any jumper along or not.

Q. Examine that reel, and state whether or not you are able to identify it.

A. There were reels with the party but I could not state whether these are the ones or not.

Q. Are you able to identify these underclothes?

A. I would not care to identify underclothes.

Q. State whether or not there were underclothes with your party similar to that in quality.

A. Yes, sir; I know Con bought a couple of suits in Seattle before we left.

Q. Did they correspond to that?

A. I saw him wear clothes similar to these.

Q. Are you able to identify any of these?

A. It is pretty hard to identify clothing that has been worn.

Q. Was that shirt theirs?

A. I do not remember that shirt; they may have had it in their sacks. I do not remember having seen it.

Q. Can you identify that undershirt?

A. I could not identify undershirts.

159 Q. Just examine those socks and handkerchiefs and towels and state whether or not they correspond with those which you had in the party.

A. I think we had a couple of dozen towels something similar to these. I know that one don't belong to me; I do not remember seeing that one. Rooney or them might have had it in a sack. Those handkerchiefs, I do not know which of them owned them. I know they had some socks like these, but whether these are them or not I could not tell. They were similar to that in color.

Q. Of the same material?

A. Yes, sir; same material.

Q. Same color?

A. Yes, sir. These socks are similar to the ones I had in the satchel.

Q. State to whom those boots belong.

A. I could not say to whom those boots belong unless they are Florence's.

Q. Did he wear the largest boots in the party?

A. Well, Con wore his boots and Florence had his heavy shoes on at the time of the accident.

Mr. McGINN. If the court please, we now offer this bag in evidence.

Mr. SULLIVAN. We have no objection.

The COURT. That will be marked "Plaintiff's Exhibit GG."

Q. Examine that coat, and state whether or not you have ever seen it before.

160 A. Yes, sir; this is Florence Sullivan's coat.

Q. When did you last see Florence Sullivan with that coat?

A. I saw him wear it on the "Colby" coming up this spring.

Q. You are positive about that being his coat?

A. Yes, sir.

Q. Examine that, and state whether or not you have ever seen it before. [A small canvas bag.]

A. No, sir; I do not remember seeing anything like it before.

Q. Examine that coat, and state whether or not you have ever seen it before.

A. Yes, sir; that is Con Sullivan's coat.

Q. When did you last see Con Sullivan with that coat?

A. On Unimak Island.

Q. On what day?

A. It was the last day coming down; he wore it on the boat. It was the seventh of June.

Q. Did he wear the coat on the return trip to the camp?

A. Yes, sir; he always wore his coat. We never let him do much but attend to the sails.

Q. Why was that?

Mr. SULLIVAN. I object to that as immaterial.

The COURT. Objection will be sustained.

Q. You are positively able to identify that coat as belonging to Con Sullivan?

A. Yes, sir.

Q. Examine that, and state whether you have ever seen it before.

A. No; I do not remember seeing it before.

Q. I will ask you to examine those blankets and state whether

161 or not you are able to identify them.

A. Sullivans had a big heavy pair of blankets like these.

Q. State whether or not in your opinion these are the same blankets they had.

A. They are the same kind of blankets.

Q. Did they correspond with them in color?

A. Yes, sir.

Mr. McGINN. If the court please I now offer this bag in evidence.

Mr. SULLIVAN. No objection.

The COURT. That will be "Plaintiff's Exhibit HH."

Q. Examine that comforter, and state whether or not you are able to identify that as the property of either of the Sullivans, Rooney, or yourself.

A. Yes, sir; that belonged to me.

Q. Did you have this comforter at Cape Lapin?

A. Yes, sir.

Q. Where did you have it?

A. I had it in the sack.

Q. Was that in the first boat load of goods you brought down from your camp to Cape Lapin?

A. Yes, sir.

Q. Examine that blanket, and state whether you are able to identify it as the property of either of the Sullivans, Rooney, or yourself.

A. That looks like a pair of blankets of mine. I am pretty certain they are mine.

162 Q. Did you have these blankets at Cape Lapin?

A. Yes, sir.

Q. Were they in the boat—the first boat load that you brought to your camp at Cape Lapin?

A. Yes, sir.

Q. Examine that robe, and state whether or not you are able to identify it.

A. Yes, sir; that is my robe.

Q. Examine that slicker, and state whether you are able to identify that as the property of the party.

A. We had three like it. One was smaller than the other. Mine and Florence's were the same size and one was smaller.

Q. Examine that hairbrush, and state whether you are able to identify it.

A. Yes, sir; this belongs to me.

Q. Examine those glasses, and state whether you are able to identify them.

A. These belong to Florence Sullivan. They are his snow glasses.

Q. Examine that knife, and state whether or not you are able to identify it as the property of either of the Sullivans, Rooney, or yourself.

A. We had a knife something similar to that.

Q. Do you think that is the knife?

A. I can not tell; it looks very much like it.

Q. Examine that shirt, and state whether or not you are able to identify that as the property of either of the Sullivans, Rooney, or yourself.

A. Yes, sir; I will swear to that shirt all right. I burned it

163 and put a piece of cloth in it upon Unimak Island.

Q. About what time?

A. Some time in June.

Q. On the sixth day of June, on the day that you came to Cape Lapin, where was this shirt?

A. At the upper camp.

Q. On the day that you came down was this shirt in the first boat load of stuff that you brought to Cape Lapin?

A. Yes, sir; all our clothing was in that load except my robe.

Q. And the comforter and the blankets were also in the first boat load that you took down?

A. Yes, sir.

Q. Where did you carry that stuff to? Where did you leave it?

A. We left it in the tent.

Q. Examine that shoe, and state whether you are able to identify it as the property of any member of your party.

A. Yes, sir; I had a pair of shoes like these.

Q. Do you know whether or not these are your shoes?

A. I am pretty certain they are mine.

Q. Examine that pair of shoes, and state whether you are able to identify them.

A. That pair of shoes belongs to Con Sullivan.

Q. Examine those gloves, and state whether or not you are able to identify them as the property of either of the Sullivans, Rooney, or yourself.

A. I had two pair of mitts like these.

Q. You had two pair?

164 A. Yes, sir.

Q. Examine that cap, and state whether you are able to identify it.

A. Yes, sir; that is my cap.

Q. Examine that whisk broom, and state whether you are able to identify it as the property of either of the Sullivans, Rooney, or yourself.

A. Well, I think this belonged to the Sullivans; they had a little brush like this along.

Q. Do you know to whom that belongs?

A. Yes, sir; I had something similar to that in my satchel, with a lot of needles in it.

Q. Examine that, and state whether or not you are able to identify that.

A. Yes, sir; that is a rod we had for cleaning the rifle.

Q. To whom did it belong?

A. That belonged to the party.

Q. Examine that hair clipper, and state whether or not you are able to identify it.

A. That is such a clipper as we had.

Q. Examine that razor, and state whether or not you are able to identify that as belonging to any of the parties that I have mentioned.

A. Yes, sir; that is my razor, because I lost the top off it in coming down.

Q. I believe you testified as to the other glove?

A. Yes, sir; I had one pair like these and one pair like these.

Q. Are you able to identify that tapeline?

165 A. We had two tapelines in the party.

Q. There is nothing about that in particular that would enable you to identify it?

A. No, sir; we had two tapelines.

Mr. McGINN. I now offer this bag in evidence.

Mr. SULLIVAN. No objection.

The COURT. Let it be marked "Plaintiff's Exhibit H."

Q. Mr. Jackson, these goods that I have shown you, and which you have been able to identify, were they at Cape Lapin on the sixth day of June of this year?

A. Most of them was, with the exception of the bedding.

Q. Nothing else?

A. The clothing was all at Cape Lapin on the evening of the sixth; we left it all there.

Q. It was all on Inimak Island, was it?

A. Yes, sir; it was there at Cape Lapin and at the other camp. We only left provisions at the other place when we moved.

Q. When did you next see these goods?

A. I saw some of them upon the "Manning."

Q. When was that?

A. I think it was the twenty-third, or around there, of July—twenty-third or twenty-fourth.

Q. In whose possession were they at that time?

A. In the marshal's.

Q. J. O'Sullivan's—ex-deputy marshal?

A. Yes, sir.

Q. Was the United States commissioner also there?

166 A. Yes, sir.

Q. You say you saw some of them on the "Manning;" where did you see the others?

A. We saw some of them at the cache. There are a whole lot of them scattered on the rocks there.

Q. What, if any of these goods, did you see at the place called the cache?

A. I went around on the second day and saw lots of clothes but did not take them up.

Q. What did you see there?

A. There was underwear, hats, caps, groceries, etc.

Q. Did you see any of the goods I have shown you in there?

A. No, sir.

Q. Did you see any flour?

A. No, sir; there was one sack of flour brought out of the cache.

Q. Did you see that sack of flour; did you know who it belonged to?

A. I did not know what name was on it.

Q. Was there anything in the cache that bore the name of Sullivan and Jackson?

A. Yes, sir; there was one case of Irish stew.

Q. Where was the name?

A. On the top of the box.

Q. How was it written?

A. Sullivan & Jackson. Put on with tar or something like that.

Q. Mr. Jackson, to bring you back to where you were testifying at the adjournment of court to-night, I wish you would go right on

167 and state to the jury what happened when you, Con Sullivan, and Florence Sullivan left the boat to go up the creek the first time.

A. We started about half way to the cabin first. I went towards Unimak Pass on that side of the creek and Con Sullivan followed me. Florence went up around the cabin and went into the cabin and searched it and we met him there a little above the cabin when he was coming back. We talked for about a minute. Florence began to lament about the little grip being gone. I said, "Have you any money in it?" He said, "No, but all our papers are in it and that was a great loss to me." We went quite a little ways up the creek. The next place we saw him (Florence Sullivan) was on this little island. Con says "There's Florence." I looked around and saw him, and about a quarter of a minute after that the shooting commenced.

Q. In what direction was Florence from you?

A. He would be kind of to the southwest from where we were. We were on the north side of the creek.

Q. Do you know the distance?

A. The distance would be about two hundred and twenty-five or two hundred and thirty yards from where Florence was. Four shots went off but we could not see any smoke. Four shots were fired when a man stood up from behind a rock. His back was to us and he saw us and went on toward where we saw Florence but he was gone. We did not know who would be shot next. We went down the creek as fast as we could. When we got near the boat Rooney hollered, "Come on boys; let us get out to sea." He then started hollering about poor
168 Florence. Then we ran to the boat and had hardly got our hands on it when a shot came and took Rooney in the leg somewhere. I said, "Drop behind the boat." They were firing into the boat.

Q. Did Rooney say anything at that time?

A. He hollered, "Oh, I am shot." We lay down behind the boat, and Con said, "We will have to make a break; we will be killed." I said, "We will have to do it quick." I had no more than said this when a bullet struck the boat. We got up, and both went toward the bluff. We had not gone more than fifteen or twenty yards when Con got shot between the shoulders. He threw up his hands and hollered, "Oh, Lord! Oh, Lord!" as loud as he could. I went on, and the next shot I got it in the leg. I looked around and saw Con lying on the beach. Then I got around this point; the bullets were flying after me and I could hear them as they were hitting rocks behind me. I went as far as I could until the ocean cut me off. The sea comes in and I could go no further. I stayed there until I saw Rooney coming around this point. I pulled out my handkerchief and waved to him to come to me. He kept coming on until he came to this little place where he lay down and remained; he lay down and beckoned for me to come to him. I went over to him and he stayed on the outside and he wanted me to come in. He said, "Owen, come in and lay down here." I says, "Pat, for God's sake pick up courage and let's try to get out of here." He said, "There is no use; we are going to be all killed." He says, "He is over
169 there now searching Con's pockets." Then I begged him again for God's sake to pick up courage and come, but he shook his head. Then I made a break and started climbing the cliff. I climbed up this cliff and managed to get up it. There is a flat bench there and I stayed there until after Rooney was killed. I must have stayed in the top about twenty minutes, or probably about half an hour, when I heard two shots go off in quick succession again; it sounded so close it seemed to be right down under me where the shots were. When the second shots were fired I took off my gum boots and started off. I kept going day and night. I travelled all that evening, and the next day I struck a cabin about eleven o'clock the next night. The next morning when I was ready to start I saw four natives coming up; they were scattered; one was about a quarter of a mile across the river; I went in and bolted the door, and before long a couple came up and went to the cabin; one of them tried to open the door and found that the door was fast.

Mr. SULLIVAN. We object to this as immaterial.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception to the ruling of the court.

The natives came up to the door and tried it and found that it was fast. One of them got up onto the roof and looked down and says, "How do."

Mr. SULLIVAN. We object to his stating any conversation.

The COURT. Objection sustained.

170 Just as soon as he spoke to me I jumped for an axe and made for the door; I stayed there for twelve hours; I thought he was coming in.

Q. Did you do any writing in there?

A. Yes, sir.

Q. Where?

A. There was a little board right behind the stove.

Mr. SULLIVAN. We object.

(No ruling.)

Q. I will ask you to examine that board and writing on there and state whether or not that is the writing you made at that time.

A. Yes, sir; that is the board all right.

Mr. SULLIVAN. Now, if the court please, we object to this testimony as incompetent, irrelevant, and immaterial. This is simply a writing which he made after the fact and the only time it could be admissable as evidence is at the rebuttal.

(Argument by counsel.)

Mr. SULLIVAN. We withdraw our objection to the questions in regard to the board.

"WASHINGTON, SEATTLE.

"OWEN JACKSON: The Indians killed Con Sullivan, Florence Sullivan, and Pat Rooney at Cape Lapin on June 5th. I escaped. They have surrounded here.

"OWEN JACKSON.

"I wish you was here; you might help me. They took our 171 things and then slaughtered us. We was prospectors."

(The above was written on a board in lead pencil.)

Mr. MCGINN. We now offer this board in evidence.

Mr. SULLIVAN. No objection.

The COURT. That will be "Plaintiff's Exhibit JJ."

Q. Mr. Jackson, you wrote on there "June 5th." Why was that?

Mr. SULLIVAN. We object to that question as cross-examination of their own witness.

The COURT. The objection will be overruled.

Mr. SULLIVAN. We save an exception.

Q. How was it you came to write June 5th?

A. I do not remember putting that date on it.

Q. What was your condition at the time that you wrote it?

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

Q. As to being excited or not?

A. I was shaking all over. I was doing my best to make a mark down; I did not know but what I would be killed any minute.

Q. How long did you remain at the cabin?

A. I stayed there three days. I did not go out that day. I flagged a boat two days there.

Q. When you saw you could not flag a boat what did you do then?

A. I started then for False Pass.

Mr. SULLIVAN. We object to that as immaterial, irrelevant, and incompetent.

The COURT. Objection overruled.

172 Mr. SULLIVAN. We save an exception.

Q. Just state what you did from that time on until the 24th of June. Just state——

Mr. SULLIVAN. We renew our objection to this question.

The COURT. Objection overruled.

Mr. SULLIVAN. Save an exception.

A. I went towards False Pass, about ten miles from the cabin that I left. I saw three persons in the morning.

Q. How long did you wander around that island?

A. I wandered around until the 24th of June.

Q. Where did you arrive then?

A. At Scott's camp, where I was picked up.

Q. Who found you?

A. Fred Williamson.

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection will be overruled.

Mr. SULLIVAN. Note an exception.

Q. When did you come to Dutch Harbor?

A. On the 16th of July.

A. Did you at any time while you were with Con Sullivan and Florence Sullivan see any money upon their persons?

A. No, sir.

Q. Do you know whether or not they had any money?

Mr. SULLIVAN. We object to that as leading.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

A. Yes, sir.

Q. How did you know it?

173 A. They told me so.

Mr. SULLIVAN. We object to that question and ask the court to have the last question and answer stricken out.

The COURT. Objection sustained. It shall be stricken out.

Q. Did you ever see any money with Con Sullivan?

Mr. SULLIVAN. We object to that question.

The COURT. Objection overruled.

Mr. SULLIVAN. Save an exception.

A. I never saw him handle any after we left Seattle because there was no place we had any chance to spend it.

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

Q. Did you see him with any money in Seattle?
A. Yes, sir; I saw him buying cothing and underwear.
Q. Did you see Florence Sullivan with any money?
A. Yes, sir.
Q. When? In Seattle?
A. Yes, sir.
Q. Did you see him have any money in Cape Lapin?
A. No, sir.
Q. Did you see Con Sullivan have any money in Cape Lapin?
A. I saw Con Sullivan sewing up a pocket that he had in a vest, and also saw Florence Sullivan with a money belt when he was stripped.

Q. Mr. Jackson, what was the size of the man that you saw beh' this rock with a rifle pointed in the direction of Florence Sullivan? 174

A. He was a good sized man.
Q. Could you get a pretty good look at him?
A. Yes, sir; I got a very good look at him.
Q. How does his size correspond with the size of the defendant?
A. It corresponds; about his size.
Q. Could you tell whether or not he was a native or a white man?
A. I could not tell at the time; I was too scared.
Q. The first shot that was fired, you looked in the direction of Florence Sullivan, did you?
A. There was two shots fired.
Q. Then, how many after that?
A. There were two; there were four shots fired in quick succession.
Q. Then you went down to the boat?
A. Yes, sir.
Q. When you and Con Sullivan started to get behind this bluff of rocks, how far did you get away from the boat before Con Sullivan exclaimed "Oh, Lord! Oh, Lord!"?
A. About 15 or twenty feet.
Q. Before he made that exclamation, did you hear any report of a gun?
A. Yes; he fired into the boat.
Q. About the time Con Sullivan threw up his hands and said, "Oh, Lord, Lord!"?
A. Yes; shots were coming all the time.

Q. Did Rooney leave the boat about the time that you and Con Sullivan did? 175

A. No, sir.
Q. Do you know how long after you left before Rooney left?
A. I could not say; it might have been five minutes.
Q. Did you run around?
A. Yes, sir; I ran as fast as I could?
Q. Did Rooney run?
A. No; Rooney was walking.
Q. Could he run?
A. I do not know; he was walking, anyway; he was not running.
Q. Was he lame?
A. He seemed to walk along pretty fair; he had his hand on his leg.
Q. You went along the coast as far as you could until the sea prevented you from going any further?

A. Well, the ocean cuts you off.

Q. You arrived at that point, when you turned around and saw Rooney, and you beckoned to Rooney?

A. Yes, sir.

Q. And Rooney beckoned to you?

A. He was just about to lay down, and he beckoned to me.

Q. What condition did you find Rooney in when you got there?

A. He was lying on his back, and had his knees crossed.

Q. You left him there, did you?

A. Yes, sir.

Q. And did what?

A. I started climbing up the cliff.

Q. What is that cliff—steep or inclined?

176 A. Some of it is pretty steep.

Q. How far up did you go before you took off your rubber boots?

A. It seems to me it must have been about seventy-five or eighty feet high to the flat bench before I took off my boots.

Q. Where did you place them?

A. I left them right where I was.

Q. Did you throw them down on the beach?

A. No, sir.

Q. When did you next see these boots?

A. I saw them up here in the jail.

Q. When?

A. I saw them, I think it was, the latter part of July.

Q. Where are those boots now?

A. They ought to be in some of these sacks somewhere; the last I saw them; the time that we examined it.

Q. Have you had these boots recently?

A. No; I think I saw you with them to-night; they were one of *of* the pairs of boots that we went through to-night.

Q. The boots that you saw there to-night in the bag—are they the boots that you left there?

A. I thought I saw them.

Q. Are you sure that they are the same boots or not?

A. Yes, sir; I am confident they are the same boots.

Q. Did they have any hole in them?

A. The bullet hole is here and there is a little hole here.

Q. Was there any bullet hole in them?

A. Yes, sir.

Q. Where was that?

177 A. That was right here.

Mr. SULLIVAN. We are willing to admit that the boots were in the sack and that they had a bullet hole through them.

Q. What was the condition of your hands and feet when you got on to the top of the bluff there?

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection overruled.

Mr. SULLIVAN. Save an exception.

A. Most of the flesh was torn off my fingers when I got up.

Q. Did you wear any boots after that time?
A. No, sir.
Q. Shoes?
A. Not until the second last day's traveling; I found an old pair of slippers.
Q. On the seventh day of June what kind of footwear did you use?
A. Gum boots.
Q. After losing your gum boots?
A. I did not wear any; I had socks on.
Q. How long did you continue to wear your socks?
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Objection sustained.
Q. Mr. Jackson, this all happened on Unimak Island, that you narrated, in the district of Alaska?
A. Yes, sir; on Unimak Island, district of Alaska.
Q. Do you know what division?
A. No, sir; I do not know what division it was.
Mr. McGINN. Take the witness.

178 Cross-examined:

Q. (By Mr. SULLIVAN.) Mr. Jackson, the first time that you noticed anyone on Cape Lapin shore, then your own party was composed of yourself, the two Sullivans and Mr. Rooney. Mr. Rooney spoke up and said, "There are two persons going up the creek," or something of that kind, and "Let's get to the camp," or words to that effect.
Q. What was it that Mr. Rooney said?
A. He hollered out, "There goes two men up the creek with packs on."
Q. How far were you then from the beach?
A. Quite a little ways.
Q. About how far?
A. I should think about half a mile at the time he spoke. I do not know; it might be less.
Q. You say you looked around and saw one person?
A. Yes, sir.
Q. Your back was to them?
A. Yes, sir; I was rowing. I looked around instantly after he spoke and saw one person.
Q. Was that the time you state you saw a person rise from behind a rock?
A. No, sir; that was after.
Q. Did this person that you saw have a pack on his back?
A. Yes, sir; he had something on his back.
Q. When Rooney spoke was the first notification that anybody had that there was anybody there?

179 A. Yes, sir; we had not come in sight of the tent at the time.

Q. When you discovered that this person, after Mr. Rooney spoke and said, "There are two persons going up the creek with packs on their back," you looked around and saw only one; what did you do then?
A. We pulled in to shore as quick as we could.
Q. How long were you going to shore after that?

A. I do not know.

Q. How many minutes?

A. I have no idea how many minutes it took.

Q. After the shooting commenced you say you saw one man rise up behind a rock?

A. Yes, sir.

Q. Had any person been shot at that time?

A. Yes, sir.

Q. Which one of the party?

A. Florence Sullivan. We looked to where we saw him last and could not see him any more.

Q. How far were you from where Florence Sullivan disappeared?

A. We were about two hundred and twenty-five or two hundred and thirty yards.

Q. How far from you was the party that you say you saw rise from behind the rock?

A. About two hundred and fifty yards, I think it was. I am not certain, but think it is about that.

Q. You say, according to your testimony, that this shooting occurred on the seventh day of June of this year?

180 A. I never stated the day, because I was not certain, but to the best of my opinion it was the seventh; I am not certain about the date.

Q. How many days after the shooting—how many hours was it that you wrote this note upon the board that has been introduced in evidence?

A. I wrote that on the ninth, taking the seventh as the first day.

Q. About what time would it be on the ninth, taking the seventh as the day of the shooting?

A. It must have been along about noon, or probably afternoon.

Q. What cabin was it in which you wrote this note upon this board?

A. I found out since that it belongs to Charley Rosenberg.

Q. How far was that from the place of the shooting?

A. I should think about forty miles—to the best of my opinion.

Q. This shooting occurred some time about 11 o'clock in the forenoon?

A. About 11 o'clock in the forenoon; some time around there.

Q. It may have been earlier or later?

A. Well, I do not know; we seemed to knock around for quite a while there.

Q. What is your recollection as to the number of hours you had been out from the place of the shooting when you wrote this note?

A. The number of hours? I must have left there some time in the evening; it was along about two o'clock when Rooney was killed; two or half past two.

181 Q. You stayed on this elevation above where Rooney was until you heard the shots in the neighborhood of where he lay?

A. Yes, sir; I heard the shots.

Q. Leaving there in the evening, about how many hours was it before you reached this cabin and wrote the note?

A. I travelled all that night and the next day.

Q. How long were you in the cabin when you wrote the note?

A. I got there about ten or eleven o'clock at night.
Q. When did you write the note?
A. About eleven or twelve o'clock next day.
Q. In the meantime you had been resting?
A. I had been resting that night.
Q. You had been resting in the meantime?
A. No, sir.
Q. Now, when you arrived at the cabin did you rest?
A. Yes, sir.
Q. How late did you rest? How late next morning?
A. About six o'clock in the morning, when I got up to see them coming.
Q. At eleven or twelve o'clock of that morning you wrote this note?
A. Yes, sir; somewhere along there; I do not know the exact hour.
Q. Did you find anything in this cabin when you arrived there?
A. No, sir; yes; there was a piece of a sack of flour there.
Q. Was Mr. Rosenberg there? You speak of Rosenberg's cabin?
A. There was nobody at all there.
Q. You say that when you first came to Cape Lapin you went to a creek and camped there, if I recollect right?

182 A. Yes, sir.

Q. And you carried your goods all up to the camp?
A. Yes, sir.
Q. Then after that you moved your goods back to Cape Lapin?
A. We moved about twenty miles to the northeast from the creek.
Q. From Cape Lapin?
A. Went towards False Pass from Cape Lapin.
Q. You took all your stuff there?
A. Yes, sir.
Q. After having carried it there, you then started to move it to Cape Lapin?
A. We intended to go on to False Pass or Valdez.
Q. You say you had half of the stuff moved to Cape Lapin; you moved that in one day?
A. Yes, sir.
Q. That is what you state was the sixth in your recollection; you moved half of this stuff down?
A. Yes, sir.
Q. Did you boat your stuff there?
A. Yes, sir.
Q. Did you put your tent there?
A. Yes, sir.
Q. And put the stuff in the tent?
A. Yes, sir.
Q. Now then, how far from the beach was the tent?
A. Only a little ways from the beach.

Q. About how far?

183 A. It would only be from twenty-five to thirty feet from the beach.

Q. Did all of your party assist in moving the stuff from where you were camped to Cape Lapin?

A. Yes, sir. Some of us started in cooking lunch.

Q. And then you all returned on the next day?

A. We returned on the same day.

Q. You returned on the same day and then did not come back until the next day?

A. Yes, sir.

Q. On that trip you brought in the boat the balance of your stuff?

A. Yes, sir.

Q. How far was your camp from the beach which was situated twenty miles from Cape Lapin?

A. We were camped right back by the side of a big river that is up there.

Q. How far from the beach?

A. It would not be a quarter of a mile.

Q. You say you moved your stuff on these two trips that quarter of a mile to the boat and from the boat down to Cape Lapin?

A. Yes, sir.

Q. How long did it take the four men of your party to carry one half of the stuff on the first day that you started to move from the camp to the beach to where the boat was?

A. I do not know how long it would take one man.

Q. How long did it take the four of you?

184 A. I could not tell.

Q. You do not know how long it took you to carry the second half on the next day?

A. No, sir.

Q. Do you have any recollection of the time?

A. No, sir.

Q. You can not give any time at all that you have recollection of how long it took you?

A. No, sir; I could not.

Q. On either trip?

A. No, sir.

Q. And you have no recollection of how many trips you had to make on either day from where your camp was to where your boat was? About a quarter of a mile or whatever the distance was?

A. No, sir. We took light packs, about fifty pounds apiece.

Q. Are you a fairly good writer, Mr. Jackson?

A. No, sir.

Q. You state that you found a large number of these articles that have been offered in evidence here on the 26th or 27th of August, of this month. In company with Mr. McGinn or other persons? Mr. Aston and others that you had gone down to Unimak Island with on the "Manning," did you not?

A. Yes, sir.

Q. In company with Mr. McGinn, Deputy Marshal Richards, Mr. Aston, and Mr. Jackson?

A. Yes, sir.

Q. Where did you go to when you first arrived at Unimak Island?

185 A. We anchored there in Shaw Bay.

Q. Where is Shaw Bay as compared to Cape Lapin?

A. It is about ten miles above it.

Q. When you got there where did you go to?

A. We took a small boat and went ashore.

Q. Then where did you go after arriving on shore?

A. We started to go to the cabin where we heard these guns were stored.

Q. Who explained to you the direction you were to go to find any of those articles?

A. Mr. Aston, I believe.

Q. When you arrived at the place where a number of these articles were found, who found the articles? Who produced them?

A. Mr. Aston.

Q. You speak of the "cache" and of different articles. Who pointed out the cache or produced the articles out of the cache?

A. Some one found it on the day we were coming from Cape Lapin; who were hunting seals.

Q. You spoke of the cache at the time you were at Rosenberg's cabin; did you find any cache at that time?

A. We found only the guns and some cartridges there.

Q. Were they cached?

A. They were all cached.

Q. Who pointed out that cache?

A. Mr. Aston.

Q. Did he take you directly to the cache when he arrived there?

A. Yes, sir.

Q. Did you find any stuff near Cape Lapin on the last trip?

186 A. Yes, sir; gum boots and pants were found.

Q. On the beach?

A. Yes, sir.

Q. Where did you find the grips that you have spoken of in your testimony, Mr. Jackson?

A. They were found a little way up the creek.

Q. That is the creek that runs up there from this cove that you spoke of?

A. Yes, sir.

Q. The creek that runs up from this cove next to the cave?

A. Yes, sir.

Q. How far was it from the mouth of the creek—taking the contour of the creek—was it to where the valises were found?

A. I do not know what distance it was; it seemed like one hundred and fifty feet, or it might be one hundred and fifty yards. It might be one hundred and fifty yards or it might be two hundred yards.

Q. Who pointed out where those valises were?

A. I do not know. Mr. Richards and Mr. Aston were going along together up on the hill, and they hollered to me that they had found them. I was with the "Manning" boys.

Q. Was Mr. Aston with this party all the time when they were down on the "Manning," after they arrived on the island to look for these things, on the last trip of the "Manning?"

A. Yes, sir.

Q. Mr. Jackson, you are a miner by occupation, are you not?

A. Yes, sir.

187 Q. How long have you been a miner?

A. All my lifetime.

Q. That was the first time you were ever on Unimak Island?

A. Yes, sir.

Q. After this shooting commenced that you speak of, you did not see any person other than that one party, except this one time when you saw a man rise up behind a rock?

A. Yes, sir.

Q. At the time that Mr. Rooney called you back to him and stated to you that they were robbing Sullivan—Con—you, at that time, did not see anybody?

A. No, sir; I could not see across.

Q. You say that you saw no person except at the one time when Mr. Rooney first called your attention to the fact that there were two persons up the creek with packs, and when you saw a person rise up behind the rock and commence shooting?

A. Yes, sir.

Q. The writing on this board that has been introduced in evidence, Mr. Jackson, you wrote on the main body of the board here, and signed your name to it, did you not?

A. Yes, sir; the stovepipe was so close.

Q. Then you wrote on this end of the board?

A. I had to get up very close on account of there being only a small pane of glass. The house was pretty dark.

Q. When you wrote that, you were entirely alone?

A. I was.

Q. Mr. Jackson, you have no interest in this matter in any

188–190 way except as a citizen, and being one of the persons connected with the party at the time that the shooting occurred?

A. No, sir.

Q. How long did I understand you to say that you had known Mr. Rooney before you left Seattle?

A. I knew him about ten or twelve years.

Q. Did you first meet him in Idaho?

A. Yes, sir.

Q. As you had met Florence and Con Sullivan?

A. Yes, sir.

Q. When you saw this man rise up from behind the rock that you speak of, after the shooting occurred, how long or how soon did he disappear and you fail to see him?

A. As soon as we made a few steps into the creek we disappeared.

Q. You were afraid and got away and did not notice where he was after that?

A. I saw him for eight or ten feet walking away from this rock.

Q. After that you did not notice him?

A. No, sir.

Q. When you found these articles on the beach who was with you at Cape Lapin on the last trip of the "Manning" when you were up there?

A. Marshal Richards was along.

Q. Where was Aston?
A. He was along there too.
Q. Did he find anything on the beach, or point out anything to you?
A. I am not certain who picked up the gum boot.
Q. Were you all together at that time?
A. Yes, sir.

191 Q. I mean you three; Deputy Marshal Richards, yourself, and Aston?
A. I was with the "Manning" men all the time.
Q. Where was it you say you found this rifle?
A. It was in a cabin.
Q. Rosenberg's cabin?
A. Yes, sir. Not in a cabin; it was outside of the cabin.
Q. Did you find the shotgun there too?
A. Both were wrapped up together.
Q. Did you find the pistols there also?
A. We found the pistols in the cache, about five miles above Cape Lapin.
Q. Did Aston point it out to you?
A. No, sir; someone else found the cache.
Q. Did you find the shotgun and the rifle?
A. Yes, sir. They were tied up together.
Mr. SULLIVAN. That is all.

Redirect examination.

Q. (By Mr. McGINN.) You spoke about a cache in your cross-examination where these guns were. I want you to explain to the jury, as fully as you can, just where these guns were found.
A. Here was the door coming in here; at the left hand side of the door, probably about that high, where the e've of the house comes in, there was a sod roof and sod side; there was a hole dug in this alongside of the boards and these guns were shoved in there.

192 Q. You would not call that a cache, would you?
A. No; I would not call it a cache. It was a hole about the size of the guns.
Q. About this night that you spent at the cabin; it would be the night of the eighth, would it not?
A. That was the first night I struck it.
Q. Did you sleep in it? Did you have anything to eat?
A. No, sir.
Q. Had you had anything to eat?
A. No, sir.
Q. Did you not sleep?
A. No, sir; I did not have much sleep; I was soaking wet when I got in there.
Q. Were you present at Cape Lapin on Unimak Island when the coroner's inquest was held there?
A. I believe I was up there.
Q. Did you see any skeletons over there?
A. Yes, sir.
Q. Of human beings?
A. Yes, sir.

Q. I will ask you whether you are able to state whether the skeleton that you saw there was that of Con Sullivan?
A. Yes, sir.
Q. How are you able to say that?
A. I identified him by the clothes that he had on.
Q. Was there much flesh on his body?
A. Not very high up; the pants and overalls were on and a
193 pair of gum boots.
Q. Were you present when the doctor made an examination to ascertain whether there were any bullet holes?
A. Yes, sir.
Q. Did you notice whether there were any?
A. Yes, sir; the doctor pointed to them.
Q. Where were they?
A. I forget; he pointed them out.
Q. Did Florence Sullivan have a watch?
A. Yes, sir.
Q. What kind of a watch did he have?
A. He had a gold watch.
Q. Was there anything particular about that watch that would enable you to identify it?
A. I do not know; it was kind of a smooth case on it.
Q. Was there any inscription on the watch that you know of?
A. I heard there was a name on it; I never saw it.
Mr. McGINN. That is all, Mr. Jackson.
Testimony of Mr. Jackson closed.

194 Mr. J. C. SCOTT, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:

Q. (By Mr. McGINN.) What is your name?
A. J. C. Scott.
Q. Where do you reside?
A. Seattle, Washington.
Q. When did you come to Alaska?
A. The ninth day of May I started from Seattle.
Q. Of what year?
A. 1901.
Q. When you left Seattle, where did you start for?
A. For Cape Lazaref, on Unimak Island.
Q. When did you arrive at Cape Lazareff?
A. On the twenty-eighth day of May, 1901.
Q. When you left Seattle for Cape Lazareff, who accompanied you, if anybody?
A. My brother Charles, my son Charles, Walter Smedley, Cecil Newton, L. Hansen, Phil Voorhees, and Mr. Collinwood.
Q. Where are your brother and son at the present time?
Mr. SULLIVAN. We object to that question as immaterial and irrelevant.
The COURT. Objection will be sustained.
Q. When did you arrive at Cape Lazareff?
A. On the morning of the 28th of May.

Q. Where did you camp at that time?

A. Right close in to the bluff on the west side of the cove; a little bay there.

195 Q. What part of Unimak Island is Cape Lazareff?

A. It is about twelve miles west of False Pass.

Q. I will ask you to examine that map and state from that where Cape Lazareff is.

A. Right here.

Q. Where did you camp? Can you point out on the map where you camped?

A. Right here on this side.

Q. How long did you remain there?

A. From the 28th day of May until the 6th day of June.

Q. Where did you then go?

A. We went to Otter Cove. We camped on the west side of the neck, near False Pass.

Q. Can you point out on the map where Otter Cove is?

A. Right here.

Q. You say you arrived at Otter Cove on the 6th day of June?

A. We arrived on the night of the 6th day of June.

Q. How long did you remain at Otter Cove?

A. I could not answer that question without looking at our diary.

Q. Approximately?

A. To guess at it, probably two weeks. I think I can tell you exactly. My brother kept the diary.

Q. Have you that diary?

A. Yes, sir; here it is.

Mr. SULLIVAN. If the court please, the witness has produced a diary which his brother kept. We object to the introduction of the memorandum.

196 (No ruling.)

Q. Were you present at the time that diary was made?

A. It was made in camp from day to day.

Q. Was it made in your presence? Was it part of the time?

A. Yes, sir.

Q. Did you ever look over the diary after it was written out?

A. At times I saw it.

Q. Did you find that it stated correctly things that were in it?

A. Yes, sir.

Q. Do you know whether that diary correctly states the date that you left Otter Cove?

A. Yes, sir.

Mr. SULLIVAN. I move the court to have that last question and answer stricken out. He did not see all the memorandums made and has not testified that they were made under his directions, and he has no right to refresh his memory from the memorandum.

The COURT. It shall be stricken out.

(Argument by counsel.)

Q. You say that you know that it is correct. How do you know that it is correct?

A. We kept a large calendar in our cook tent, and I ordered the cook to mark off the days as they went by, which he did from day to day.

Q. How do you know the time is correctly stated in that diary?
A. Because I saw the diary as it was written from time to time.
Q. Did you read the diary over?
197 A. Sometimes I looked over it, and we talked the matter over about dates.
Mr. SULLIVAN. I object to his stating what they talked about.
The COURT. Objection sustained.
Q. How long do you think that you remained there?
A. We remained from the night of the 6th of June until the morning of the 27th day of June.
Q. What were you doing there?
A. We were prospecting.
Q. Did you know George Aston?
A. Yes, sir.
Q. Did George Aston ever come to your camp at Otter Cove?
A. Yes, sir.
Q. About what time?
Mr. SULLIVAN. We object to that question.
The COURT. Objection overruled.
Mr. SULLIVAN. We save an exception.
A. He came on the morning of the 7th day of June, between eleven and twelve o'clock, I should think.
Q. What year?
A. 1901.
Q. How long did he remain with you?
A. Until the morning of the 20th day of June.
Q. Who accompanied him when he left?
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Objection overruled.
198 Mr. SULLIVAN. Save an exception.
(Remarks made by Mr. McGinn, as to what would be the answer.)
Mr. SULLIVAN. We object to the remarks made by counsel that that will be the answer.
The COURT. Objection sustained, and jury instructed to give no consideration to remark made by counsel.
A. He was accompanied by Fred Hardy.
Q. The defendant Hardy?
A. Yes, sir.
Q. When did you first see the defendant, Fred Hardy?
A. I first saw him on the night of the 17th day of June.
Q. About what time?
A. I should judge it was between 9 and 10 o'clock at night.
Q. Where did you see him?
A. Sitting at the table, eating.
Q. Where?
A. At our camp at Otter Cove.
Q. How many tents had you there?
A. We had four tents.
Q. In what tent was the defendant?
A. In the eating tent.

Q. Was he eating at the time that you came into the tent where he was?

A. I was lying in bed at the time I saw him.

Q. Just state what occurred there that night.

Mr. SULLIVAN. We object to his stating the conversation
199 between himself and the defendant Hardy.

The COURT. Objection sustained.

Q. State, Mr. Scott, what if any conversation you had with the defendant that night, or any conversation that any other member of the party had with the defendant on the night, in your presence.

A. I had none myself, but Mr. Smedley, our cook, was up. The rest of us had retired. He came to the tent and said "Hello!" Said he had been out five days without food and would like something to eat, and Mr. Smedley invited him in.

Q. You heard this conversation, did you?

A. Yes, sir. Some of our party got up, but I did not. I heard them talking in the other tent, but did not get up.

Q. State the conversation you heard.

A. I do not just remember what I did hear. Sometimes they were talking lower and sometimes loud.

Q. State what you know yourself and what you heard.

A. My brother got up and went out, and pretty soon he returned and made some remarks in reference to the defendant, but I could not distinctly overhear what he said himself from where I was. It was some twenty feet from me.

Q. Did you hear him say anything?

A. I heard him talking, but could not hear what he said.

Q. Did you have any conversation with him that night?

A. No, sir.

Q. In the next morning?

A. Yes, sir.

200 Q. State what he said.

A. He was talking in a general way.

Q. Mention one thing that he said.

A. He was talking in reference to Mr. Aston. I did not talk to the defendant personally.

Q. You were present when this conversation took place?

A. Yes, sir; it took place between him and Mr. Smedley. He said he got off the boat one day after Mr. Aston got off—the "Arago."

Q. What else did he state in that conversation?

A. I could not swear to anything else that I remember.

Q. Did you have any further conversation with the defendant, or were you present when any other conversation took place between the defendant and other members of your party?

A. Yes, sir; the defendant showed a small nugget of gold that he said that he took out of a little creek running down into False Pass. The boys examined the piece of gold, and we told Mr. Hardy that if he would tell us where he found that, as we were going out prospecting, we would look it up and see if there was anything there. He described the place, and four of our party started down in search of the gold.

Q. What, if any, arms did the defendant have with him at the time that he came to the camp?

A. He had two revolvers and a rifle.

Q. What were the size of the revolvers?

A. I could not swear to the size.

Q. What was the calibre of the rifle?

A. A thirty-thirty Marlin.

Q. Did you examine the rifle?

201 A. I looked at it.

Q. I will ask you to examine that rifle (plaintiff's Exhibit EE) and state whether or not this is the one.

A. It looks like the rifle; it was in quite good condition; it was not rusty.

Q. Are you able to positively identify this rifle?

A. No, sir.

Q. Is it of the same size?

A. I did not notice the size; the boys stated that it was a thirty-thirty Marlin; I just heard the boys state it; I noticed the barrel particularly—how nice and neat it was, and little, and I would like to have a rifle like that myself.

Q. What, if anything, did he say in reference to this rifle?

A. He stated that the captain of the "Arago" had let him take it to shoot a white bear.

Q. What else did he say in regard to the rifle?

A. He stated that he expected that the captain would miss his rifle very much.

Q. Did he tell you how he happened to come ashore on Unimak Island?

Mr. SULLIVAN. We object to the question as leading.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

A. Yes, sir.

Q. Go on and relate to the jury what he told you.

A. He said that he and the captain and a man named Charley came off of the "Arago;" they stopped on the Behring Sea side of

202 the island to get water. They stopped to get water, and he said the company had a cabin there and they kept a man there to take care of it, and they paid him a salary for so doing. He said that over the door was written Sailors' Home. When they came off together, that Mr. Hardy and this man Charley went to the door of the cabin and found that it was locked, so they turned away and went up in the mountains to hunt for bear. The captain lingered behind and he and Charley went up in the mountains, and when they came back they found that the "Arago" was gone, had pulled out to sea; and it was nearly night, and they built a fire; that no attention was paid to the fire, so they went to the cabin and broke open the door and went in. They found a man lying on the bed with the flesh all torn off his bones by rats; that his finger nails had dropped off onto the floor; and he and his companion took the bones that were left and buried them outside of the cabin. They then went to bed on the floor, and in the nighttime, he did not know when, his partner got up and went away, and he had never seen him since. That is all I can think of just now.

Q. Did he make any statement to you as to what was in this cabin?
A. Yes, sir.
Q. State what he said.
A. He said there was lots of blankets, tobacco, plenty of fruit of different kinds, and a double-barreled shotgun that he hid under the floor, and in a general statement he said that there was plenty of nearly everything there.
Q. What further, if anything, did he state to you in reference to these provisions?
A. He said that he wanted to go to get them, and he wished Mr. Aston to accompany him.
Q. Was Mr. Aston at the camp at that time?
203 A. No, sir. He was at Cape Lazareff getting our last load of lumber.
Q. With whom?
A. He was with Mr. Collinwood.
Q. What, if anything, did the defendant state that he wanted to do with these goods?
Mr. SULLIVAN. We object to that as leading.
The COURT. Objection overruled.
Mr. SULLIVAN. We save an exception.
The COURT. Exception allowed.
A. He said he wanted to use them; he said he needed them.
Q. Did he state where he proposed to take them?
A. No, sir.
Q. (By Mr. SCOTT.) Will I tell where these conversations took place?
A. (By Mr. MCGINN.) Yes, sir.
A. It took place at noon, on the east side of False Pass, on the mainland, just after we had eaten our dinner, Mr. Voorhes being present, and myself and Mr. Hardy.
Q. How was the defendant dressed when he came to your camp?
A. I think he had on a pair of blue overalls, a vest, and a coat.
Q. What kind of footwear did he have on?
A. He had on a pair of sea boots, with the legs cut off.
Q. Do you know whether or not he had any money?
A. Yes, sir.
Q. State what you know in regard to that.
Mr. SULLIVAN. We object to that as immaterial and irrelevant.
The COURT. Objection overruled.
Mr. SULLIVAN. We save an exception.
The COURT. Exception allowed.
204 A. Mr. Hardy asked the question, after we had eaten our dinner, if we had any money in camp; said he was looking to trade his money for gold; said it was bills and he was afraid it would wear out. He would like to get gold for it. I told him that I thought he had come to a poor place to get his money changed, as I did not think there was five dollars in camp. During the conversation he took out his pocketbook and laid on his lap and showed us the money and said that he had about twelve hundred dollars. I thought when I looked at it that there was that amount there. He took up the bundle of bills that lay one on top of the other in the center of the pocketbook and turned them over and called

my attention to the fact that these were twenty-dollars bills. I saw several, but do not know how many. In one end of the book there was a roll of bills folded up like you would fold a letter. There was a bundle of bills in the center.

Q. Did he make any statement to you as to where he got this money?

A. I think he did in the camp; I am not certain. I heard him say that he was paid off for his services in the United States Army in the Philip'ines.

Q. Did he state to you his rank?

A. He did in camp; not to me personally.

Q. Did you hear him?

A. I could not say that I heard him.

Q. Did the defendant have any jewelry of any kind to your knowledge?

A. He had a piece of silver, about the size of a fifty-cent piece, with the figures "one thousand" on it. He placed that on the chain of the watch at our camp and made the remark that that was worth a thousand dollars.

205 Q. What kind of a chain did he carry?

A. I could not identify the chain.

Q. Did he carry a watch?

A. Yes, sir.

Q. Did you see it?

A. I saw it.

Q. What kind was it?

A. I think it was a gold watch; I could not describe it; I saw him take it out a few times and look at it; I did not watch closely enough to be able to describe the watch.

Q. How many times, if any, did you see him count his money at your camp?

A. Only once that I saw him.

Q. When did Hardy leave your camp?

A. On the morning of the 20th day of June.

Q. With whom was he accompanied?

A. With George Aston.

Q. How did they leave?

A. They left in a fishing dory.

Q. To whom did the fishing dory belong?

A. Mr. Aston said it belonged to the "Arago."

Mr. SULLIVAN. We move that the last question and answer be stricken out.

The COURT. Motion allowed; it shall be stricken out.

Q. I will ask you to examine these watches, Exhibits I and J, and state whether or not you can tell whether either one of them was carried by the defendant at the time that he was at your camp at Otter Cove.

Mr. SULLIVAN. We object to that as immaterial and irrelevant, and upon the further ground that he has already testified that he could not identify the watch.

206 The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

The COURT. Exception allowed.

A. I should say that this was the watch that he carried.

Mr. SULLIVAN. I would like the records to show that the witness refers to Plaintiff's Exhibit I.

The COURT. The record shall state that.

Q. What kind of a pocketbook had he?

A. Well, I should say it was one where the bills could be laid in the center with little flaps over them and a pocket at each end.

Q. Do you know whether or not he had any other watches on him at that time?

A. I thought he had, but could not testify very positively; there were places in his pockets which looked like he had watches in his upper vest pockets.

Mr. SULLIVAN. I desire to move the court, if the court please, that nothing be attached to the exhibits except the marking of the exhibits themselves, and I move to strike from the Exhibits J and I the statement contained thereon, "September 3rd., '01." from each of these exhibits.

The COURT. Denied.

Mr. SULLIVAN. Exception.

The COURT. Exception allowed.

Cross-examined:

Q. (By Mr. SULLIVAN.) Mr. Scott, did you live at a place called or known as "Scott's Camp?"

A. No, sir.

Q. Where did you live?

A. I live at the corner of Hanover and Kilburn avenues, Seattle.

207 Q. Did you ever live on Unimak Island?

A. Yes, sir.

Q. When?

A. From the 6th day of June until the 27th day of July.

Q. Where were you living at that time?

A. Part of the time at Cape Lazareff and part of the time at Otter Cove.

Q. Where were you living during this conversation that you had with Mr. Hardy?

A. I was living at Otter Cove on Unimak Island.

Q. How long did you live at Otter Cove?

A. From the night of the 6th of June until the morning of the 27th.

Q. How long did you live at the other place that you speak of?

A. From the 28th of May until the morning of the 6th of June.

Q. Up to the 6th day of June did you ever see the prisoner, Mr. Hardy?

A. No, sir.

Q. You never saw him until the 17th day of June?

A. No, sir.

Q. What is your occupation?

A. Past two years a prospector and miner. The year before that I was an agent; a while for the American Woolen Mills Co.

Q. And before that?

A. A minister.

Q. Where and when?

A. From the time that I was twenty-one years old until about three years ago.

Q. How old are you?

A. Forty-six years.

Q. And about three years ago you became an agent and then
208 after that came to Alaska?

A. Yes, sir.

Q. What day did you move to Otter Cove from the other part of Unimak Island?

A. We started to move on the 6th day of June.

Q. You moved there on the 6th?

A. Yes, sir.

Q. What is the distance between the two points?

A. I should judge about—it takes us six hours to walk it and walk pretty fast. Mr. M says it is only twelve miles. We thought it was about sixteen miles.

Q. You say Hardy produced money?

A. Yes, sir.

Q. On the 17th or the day after the 17th at your last camping place?

A. The 18th day of June, when we were at False Pass.

Q. In currency?

A. In bills; he had some silver in an extra pocketbook.

Q. A small amount?

A. Yes, sir; I should judge so.

Q. And he told you he had twelve hundred dollars, money he had received when he was mustered out of the United States Army?

A. He said there was about twelve hundred dollars there; he said he had about a thousand dollars in the bank in San Francisco.

Q. You say that he and Aston left on the 20th day of June, 1901?

A. Yes, sir.

Q. You are positive about that date, are you?

A. Yes, sir.

Q. Certain of it?

A. Yes, sir.

Q. Mr. Scott, I will ask you to look at that signature and state
209 whether or not it is yours.

A. Yes, sir; that is my signature.

Q. I will ask you whether you did not state over that signature that "Hardy remained with us on the night of the 19th, and on the following day, accompanied by George Aston, left our place to go to where he said these goods were." The following morning, the 20th—was that the morning or afternoon?

A. The morning.

Q. Are you positive?

A. Yes, sir.

Q. Did anyone else go with Aston and Hardy from the camp?

A. Yes, sir.

Q. Who was it?

A. My brother, Charles; my son, Charles; Mr. Collinwood, and Cecil Newton.

Q. Did you say anything about that in your affidavit?

A. I do not remember that I did.

Mr. McGinn. I object to that question as immaterial.

The Court. Overruled.

Q. Did you say anything about any other persons accompanying Mr. Hardy, except Mr. Aston, in your affidavit?

A. Accompanied him when?

Q. On the following day after the 19th, when they left your camp?

A. Not that I remember.

Q. I will show you the affidavit. This affidavit was filed in regard to a motion for a continuance. Did you know what it was filed for?

A. No, sir.

Q. Did you know what it was when you signed it?

210 A. Well, I signed an affidavit.

Q. At the request of the United States attorney?

A. Yes, sir.

Q. Look at that and see if it is the one you signed.

A. Yes, sir; I signed that affidavit.

Q. I will ask you whether or not you stated in that affidavit that anyone except George Aston accompanied the defendant, Hardy, at the time you say he left your camp on the 20th day of June, 1900?

A. I stated that in the affidavit—that George Aston left with him.

Q. Did you state in the affidavit that any other person left with him except George Aston?

A. No, sir.

Q. You now say there were how many persons left with him?

A. The statement I made in my affidavit—I had reference to the time they left and went towards False Pass.

Q. How many left?

A. Five, I think, besides these two.

Q. That is, besides Hardy and Aston?

A. Yes, sir.

Q. Did you mention any of the names of the five in the affidavit?

A. No, sir; not that I remember. No, sir; I did not.

Q. Did the defendant, Hardy, pay you any money while he was at your camp?

A. Yes, sir.

Q. How many days was he there?

A. From the night of the 17th until the morning of the 20th.

Q. How much money did he pay you?

A. He paid me fifty-one dollars and fifty cents.

Q. Did he undertake, when he first arrived there, to change

211 any bills or currency of any kind?

A. No, sir.

Q. Did he not ask you to change bills?

A. Not when he first arrived. It was noon of the 19th of June.

Q. And what did he do then about changing bills?

A. He asked me if I knew where he could change his bills for gold.

Q. Did he ask you if you could change them?

A. He asked us if we knew where he could change them. He asked if he could get them changed in our camp.

Q. Did not you reply to him that you did not think there was five dollars in camp?
A. Yes, sir.
Q. That is the time you testified to in your direct examination you saw the money?
A. Yes, sir.
Q. Have you been in communication with the United States attorney or any officer of the Government since the arrest of Mr. Hardy?
A. Yes, sir.
Q. What officer?
A. Mr. Whipple.
Q. You mean the United States commissioner?
A. Yes, sir.
Q. And the deputy marshal, Mr. Richards? Did you ever see Mr. Sullivan, ex-deputy marshal—ever talk to him?
A. Yes, sir.
Q. About this case?
A. Yes, sir; I have talked with our boys in camp, but no officer that I remember.
Q. Ever talk to Mr. McGinn about this case?
A. Yes, sir.
Q. He drew this affidavit, did he not?
212 A. Yes, sir.
Q. Do you know George Aston?
A. Yes, sir.
Q. Did you not hear or know that he is under arrest at the present time?
Mr. McGINN. We object to that as incompetent and immaterial.
The COURT. Objection overruled.
Mr. McGINN. Exception.
A. No, sir; I did not.
Q. You have seen him before?
A. Yes, sir.
Q. Ever talk to him about this case?
A. Some.
Q. Have you talked to him since the 19th day of August, 1901?
A. The conversation I have had, I have had since I came here.
Q. Did you not have any conversation with him before you came here?
Q. (By Mr. SCOTT.) In our camp?
Q. (By Mr. SULLIVAN.) Since you came here, you have had conversation with him?
A. Yes, sir.
Q. Went over the facts in the case with him?
A. I may; a little.
Q. Did you have any object in seeing him otherwise than talking over this case?
A. No, sir.
Q. How frequently have you seen him since the 19th day of August?
A. Until he went on the "Manning" on the last trip?
Q. Where have you been at since the time of the preliminary examination?

213 A. At a place called the jail.

Q. What have been your duties down at the jail?

A. I have not had much responsibility at all. I helped a little around the house and watched some, more or less.

Q. I wish you would tell the jury what your duties were at the jail?

A. I am not employed for anything at all at the jail.

Q. What have you been doing there?

A. I watched two or three times.

Q. On whose request did you go to the jail?

A. The marshal's; deputy marshal.

Q. Which deputy marshal?

A. Mr. Richards, of Unalaska.

Q. Did Judge Whipple request you to go there?

A. I do not remember that he did; he knew of my going at the time, but I can not say that he did request it.

Q. Were you employed to go there?

A. No, sir.

Q. Then, what you have been doing there is go there and eat and sleep there; is that it?

A. Yes, sir; boarding there.

Q. Boarding and helping?

A. Yes, sir.

Q. You have seen Mr. Aston daily during that time, with the exception of the time that he was absent on the "Manning?"

A. Yes, sir.

Q. She went there a week ago last Wednesday and returned on Sunday morning, did she not?

A. I believe so; Saturday night, I think.

Q. You have slept with Aston and talked to him daily?

A. I have talked daily, more or less.

Q. He is no relation of yours in any way?

214 A. No, sir.

Q. You never saw him until at your camp?

A. No, sir.

Q. You had no business transactions of any kind with him?

A. A little; we had a verbal agreement when he came to our camp.

Q. Was it on account of the verbal agreement that you talked to him daily?

A. No, sir.

Q. You had no reason in seeing Mr. Aston and talking to him except in matters relating to this case?

A. I just saw him in passing by, and saw him every day.

Q. You say you had a verbal agreement with Mr. Aston?

A. Yes, sir.

Q. When was it made?

A. About the time that he came to our camp.

Q. About what time was that?

A. He came to our camp on the 7th day of June.

Q. What time of the day?

A. I should judge between 11 and 12 o'clock.

Q. Where is your camp situated? I have forgotten on this map. Is it situated about this Cape Lapin anywhere?

A. Our first camp was right here at the land marked Cape Lazareff.

Q Was that on the 7th day of June that you met him; in there?

A. No, sir; I met him over here.

Q. Then it was on the point of Otter Cove?

A. Yes, sir; over near the point of Otter Cove. About here is where we camped, near the point of Otter Cove.

Q. There you met him on the 7th day of June?

A. Yes, sir.

Q. What is the distance between Cape Lazareff and Otter Cove
215 there as marked on the map? What do you consider the distance on an air line? Give the air line first.

A. Well, it would only be a guess at the best. I should judge perhaps on this map——

Q. Have you ever been to Cape Lapin?

A. No, sir.

Q. Do you know of your own knowledge anything about the distance between the two points?

A. No; nothing positive.

Q. Do you know anything that is not positive? In a general way?

A. I could not say anything about the distance.

Q. On what date did you leave from Lazareff for Otter Cove?

A. We moved on the 6th. We started to move on the 6th of June.

Q. You moved on the 6th?

A. We started to move on the 6th.

Q. And what is the distance; about 12 miles?

A. I thought it was 18 by land, but they claim that it is 12 by water.

Q. How many days were you in moving?

A. I could not answer that question positively. We had to get three or four loads.

Q. Ten or fifteen days?

A. No, sir; not as many as that.

Q. How many days?

A. I should judge five.

Q. Do you think that it took you more than five days to move eighteen miles?

A. Yes, sir.

Q. It took you more than five?

A. Well, five or six.

216 Q. Did it take you ten days to move?

A. I do not think it did.

Q. Did it take you fifteen?

A. No, sir.

Q. Do you think you were more than five days in moving?

A. I think perhaps we were.

Q. Did you go overland?

A. I went overland, but everything else was taken in the boat.

Q. What did you carry overland?

A. I carried a gun, and the balance of the stuff was taken in the boat.

Q. The distance by boat was twelve miles?
A. Mr. Mobeck says so.
Q. You have some idea about the distance, have you not?
A. Well, it seemed a long ways to me; it seemed longer to walk it.
Q. Who got there first, the parties going by boat or yourself going overland?
A. Mr. Smedley and myself.
Q. Going overland?
A. Yes, sir.
Q. That seemed to you like eighteen miles?
A. Yes, sir.
Q. How many days did it take you to go that eighteen miles?
A. Six hours.
Q. How long did it take the boat to go?
A. It reached the second camp about 9 o'clock that night. We got in about seven, just as the "McArthur" got in.
Q. Was Hardy there on the day that you received your last goods or supplies in making your removal to the new camp?
A. We had not received some of them; we could not get them there.
217 Q. When you received the last was Mr. Hardy there?
A. Yes, sir.
Q. He was there?
A. Yes, sir.
Q. Was he there at the time the last boat load came in?
A. No, sir.
Q. Who took the last load over?
A. My son, I think.
Q. What is his first name?
A. Charles.
Q. Where is he now? Is he here?
A. No, sir; he is at Unga.
Q. Where is Unga Island?
A. Unga is on Unga Island.
Q. Where is Unga Island?
A. It is east of here.
Q. How far east?
A. Two hundred and sixty-eight miles, I think. I was just thinking in reference as to whether Mr. Hardy was there when we brought the last load there. We were bothered by the wind and tide in getting there. I think that my boy was in camp, if my memory serves me right, when Mr. Hardy came, and Mr. Collinwood and Mr. Aston was absent, getting the last load of lumber.
Q. You say you were prospecting on Unimak Island?
A. Yes, sir.
Q. Were there any other persons associated with you?
A. Yes, sir.
Q. Who were they?
A. Cecil Newton, L. Hansen, Walter Smedley, my brother Charles, Phil Voorhes, and Mr. Collinwood.

Q. Were they all prospectors before they came to Unimak Island?

218 A. Some had had a little, I think, but not very much.

Q. Did you see many prospectors on Unimak Island?

A. Not very many.

Q. Were there very many engaged in prospecting on the island at the time?

A. No, sir; very few, so far as I know.

Q. How long have you been acquainted with Judge Whipple?

A. Since I came here on the mail boat the last time. I never knew him before.

Q. When was that?

A. I think it was about the 23rd of August.

Q. You were not present at the preliminary examination, and about that time—whenever the mail boat arrived—you have been staying at the jail?

A. Yes, sir.

Q. You never knew Judge Whipple before you came in here?

A. No, sir.

Q. Never had any transaction of any kind before coming here?

A. Never; with the exception of writing him a letter.

Q. You called on him when you came here?

Mr. McGINN. If the court please, I object to that as immaterial.

The COURT. Objection overruled.

A. Yes, sir.

Q. You say you never had any conversation with Mr. Sullivan?

A. Yes, sir; since I came here to Unalaska I have.

Q. Since the 23rd of August, or whenever you arrived here?

A. Yes, sir.

Mr. SULLIVAN. Take the witness.

219 Redirect examination:

Q. (By Mr. McGINN.) Mr. Scott, in the affidavit which was subscribed and sworn to before you or by you on the second day of September you state that "Hardy remained with us on the night of the 19th, and on the following day, accompanied by Aston, left our camp for the purpose of going to the place where these goods were." Is that a fact?

A. That is a fact.

Q. Was there anyone else of your party left your camp on that day?

A. They left for the shore; that was all.

Q. Only a temporary absence, was it?

Mr. SULLIVAN. We object to that question.

(No ruling.)

A. Yes, sir.

Q. Explain to the jury how it was that these five people came to accompany Aston and Hardy to the shore.

Mr. SULLIVAN. We object to that question as to how they came to accompany them.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

A. Mr. Hardy and Mr. Aston wished the boys to accompany them across the neck with the dory to their starting point. Five of our boys helped them to do that and went with them to where they started in the dory, but they left alone with the dory to go down the pass.

Mr. SULLIVAN. I move the court that that last testimony be stricken out.

The COURT. Overruled.

Mr. SULLIVAN. Exception.

Q. How far was that from camp?

220 A. To guess at it, I should think about a quarter of a mile.

Q. Did they return to camp?

A. Yes, sir.

Q. How long had they been absent?

A. I should judge about over half an hour.

Q. You say that these men did not leave your camp again that day?

A. No, sir.

Q. Why are you here at Unalaska at the present time, Mr. Scott?

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection sustained.

Q. Where were you on or about the 15th day of August of this year?

A. I was at Unimak Island.

Q. When did you leave Unimak Island?

A. I think it was on the morning of the 22nd of August on the "Newport."

Q. How was it that you happened to leave?

Mr. SULLIVAN. We object to his answering that question.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

The COURT. Exception allowed.

A. Mr. Richards requested us to come along as witnesses in this case.

Q. When did you arrive at Unalaska?

A. I think it was the evening of the 23rd or 24th of August.

Q. And where have been your quarters since that time?

A. With Mr. Richards, deputy marshal.

Q. Where?

A. Down here along the beach.

Q. Is it the jail?

221 A. Not the jail proper; the jail proper is back of it.

Q. Is it the deputy marshal's quarters?

A. Yes, sir.

Q. Does he stay there himself?

A. Yes, sir.

Q. You have been eating and sleeping there since you have been in Unalaska?

A. Yes, sir.

Q. Are you in the employ of anybody at the present time?

A. No, sir.

Q. Have you got any feeling in this prosecution?

A. No, sir.

Q. You say that you have seen Aston daily since you have been at the deputy marshal's headquarters?

A. Yes, sir.

Q. Did you and Aston at any time ever talk about what you were going to testify to in this court?

A. I do not remember that we did.

Q. Do you remember who brought back the last boat load of provisions from Cape Lazareff to your camp at Otter Cove?

A. I think it was Cecil Newton, my son, Charles and George Aston, if I remember right.

Q. Do you remember if Mr. Collinwood was along or not?

A. Mr. Collinwood went on the last trip with Mr. Aston, but they did not succeed in getting the boat over.

Q. When did they return?

A. They returned on the 19th of June.

Q. The defendant was at your camp at that time?

A. Yes, sir; he was absent with me up the pass when they got back; they got back at night. They were in camp when we got back from our prospecting trip, Mr. Voorhes and myself.

222 Q. Did Aston and the defendant have a conversation together at that time?

A. Yes, sir.

Q. Where did that conversation take place?

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

The COURT. Exception allowed.

A. Mr. Aston met him at the boat and they came up together.

Q. Did you hear the conversation between them?

A. No, sir.

Q. Do you know whether or not they had any conversation that night?

Mr. SULLIVAN. We object to that.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

The COURT. Exception allowed.

A. I could not say positively; more than hearsay; but to my own knowledge I could not say so.

Q. Have you ever been offered any reward to testify in this case, or any compensation whatever?

Mr. SULLIVAN. We object to that question as immaterial and irrelevant.

The COURT. Objection sustained.

Mr. MCGINN. That is all.

Recross-examination:

Q. (By Mr. SULLIVAN.) Mr. Scott, what day did you say that you saw Aston and the defendant in conversation?

223 A. The night of the 19th day of June.

Q. Where were you at that time as refers to your camp?

A. Our camp was right there at Otter Cove.

Q. How long had you been out prospecting before that?

Q. (By SCOTT.) You mean on that day?

A. (By SULLIVAN.) Yes; or any day.

A. We started on the 9th day of May for Cape Lazareff and began as soon as possible to prospect; we had been prospecting during that intermediate time off and on.

Q. Some days we would be at camp and some days prospecting?
A. Yes, sir.
Q. You say that you were not confined in the regular jail here but the building off to one side where Deputy Marshal Richards lives. Is not that the same building in which George Aston is confined?
A. Yes, sir.
Q. You have slept since you arrived here and boarded at the same table with Mr. Aston, have you not? Slept in the same building?
A. Yes, sir.
Q. When you speak of casually meeting Mr. Aston daily, there is where you have met him, is it not?
A. Yes, sir.
Q. You say that you have been there all this time and have never talked with him in regard to the merits of this case?
A. I have talked with him about things that happened in our camp.
Q. You went over things pretty generally, have you not?
A. No, sir; not generally.
Q. You have not talked about dates and times?
A. I do not know but I have mentioned some dates.
Q. Did he ever mention any dates to you?
224 A. Not that I remember.
Q. He has not undertaken to tell you his story while you were there, at all?
A. No, sir; he has mentioned some things that took place when we were together.
Q. Have you gone over the question as to the time when he was at your camp or when Hardy was at your camp, or any dates when you and he were together?
A. Not that I remember; I do not remember mentioning any dates.
Q. You say you have not at any time gone over with Mr. Aston the dates when any of these transactions occurred?
A. I would not wish to state that positively; I may have mentioned it to him. I am not certain.
Q. Are you certain whether Mr. Aston mentioned any dates to you?
A. I could not say.
Q. Are you certain that he did not?
A. No, sir.
Q. How many times a day did you usually meet Mr. Aston?
A. I see him all the time while I am there.
Q. How often are you there?
A. I have been there most of the time.
Q. How many people are there besides Mr. Aston and the deputy marshal?
Mr. McGinn. We object to that question.
(No ruling.)
A. Mr. Collinwood, Mr. Hardy, and Mr. Newton.
Q. Mr. Aston is there most of the time, is he not?
A. Yes, sir.
Q. And you have been there most of the time, have you not?
A. Yes, sir.
Testimony of Mr. Scott closed.

225 Mr. CECIL NEWTON, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) What is your name?
A. Cecil Newton.
Q. How old are you?
A. Twenty years.
Q. Where are you from?
A. Fremont, Wash.
Q. When did you leave Washington?
A. On the 9th of May.
Q. With whom did you leave?
A. Mr. Scott and party.
Q. For where did you leave?
A. Unimak Island.
Q. When did you arrive at Unimak Island?
A. On the 28th day of May.
Q. At what part?
A. Cape Lazareff.
Q. How long did you remain there?
A. From the 28th of May to the 6th of June.
Q. Then where did you go?
A. To Otto Cove.
Q. How long did you remain at Otto Cove?
A. Along until about the last of June—28th or 29th—somewhere around there.
Q. Where were you on or about the 7th day of June of this year?
A. At Otto Cove.
Q. Do you know George Aston?
A. I met him there.
Q. When did you first see him?
A. On the 7th of June, about noon.

226 Q. Where?
A. At Otto Cove in camp.
Q. What was the camp known as or called?
A. Just a camp on Otto Cove.
Q. How long did Mr. Aston continue with you?
A. From the 7th to the 20th. On the morning of the 20th.
Q. When Mr. Aston arrived there, what did he have with him?
Mr. SULLIVAN. I object to the question as immaterial.
By the COURT. Objection overruled.
Mr. SULLIVAN. We except.
By the COURT. Exception allowed.
A. When he came to camp he had his clothes on; that was all he had with him. He had a fishing boat.
Q. How did he come there?
A. In a dory.
Q. Do you know the defendant, Fred Hardy?
A. He came to our camp. That was when I first saw him.
Q. When was that?
A. On the 17th of June.
Q. Of this year?

A. Yes, sir.
Q. What time of the day or night did he come there?
A. Along about dark; at night. I do not know the time.
Q. How many tents did you have there?
A. Four.
Q. What tent did he occupy?
A. The sleeping tent.
Q. What was the other tent? How many sleeping tents did you have?
A. We had one and a cook tent, and Mr. Cullinwood had a tent, and we fixed up a piece of canvas outside to store things in.
227 Q. Where were you when Hardy arrived at your camp?
A. Just as he came into camp I stepped out of the cook tent and walked up against him.
Q. Did you have a conversation with him then?
A. I spoke to him, and he said he had been out five days and was hungry and wanted something to eat. I took him inside and gave him some grub.
Q. Who cooked the grub?
A. The cook.
Q. What was his name?
A. Smedley.
Q. Were you there while the defendant ate the grub? Did he eat like a man who had been without food for five days?
A. No, sir.
Q. Why?
A. He did not eat very much. Not half as much as I would to a meal.
Q. What conversation, if any, took place between Smedley, yourself, the defendant, and any other person who was there that night in the presence of the defendant?
Mr. SULLIVAN. We object.
(No ruling.)
Q. State what the defendant said.
A. He said he had traveled a long ways and felt done up and tired. Said he came off a schooner.
Q. Did he give the name of the schooner?
A. The "Arago."
Q. Did he say when he left the "Arago?
Mr. SULLIVAN. We object to that as leading.
By the COURT. Objection overruled.
Mr. SULLIVAN. Exception.
By the COURT. Exception allowed.
228 A. He did not say exactly when he left.
Q. What did he say?
A. I do not know that he said anything in reference to leaving, except that he came ashore with the captain, who offered him fifty dollars apiece for a bear skin, and he came ashore to see if he could not get a bear. The captain went back to the ship and gave him his rifle. He and his partner went up on the hill and got lost, and it was quite a while before they got back, and the ship had pulled out and left them.

Q. Then what happened?

A. He said that there was a cabin there that was locked, and they broke open the door and went inside and found a man in the bed, and he was pretty well gone; all the meat had been eaten off his bones by the rats; they took him out and buried him, and they went inside and got some grub and went to bed on the floor and turned in; and during the night his partner got up and left him; that was the last he saw of his partner.

Q. Did he tell you where the cabin was?

A. Along the Behring Sea side at the watering station, I believe.

Q. Did he state what was in the cabin?

A. Provisions, shotgun, tobacco, blankets, and things like that.

Q. What else did he tell you that night?

A. In a general conversation that took place he mentioned that, when one of our boys asked him if he had some ex-soldiers aboard the "Arago," that there were and he was one of them. He belonged to the Tennessee regiment, and there was one of our boys who was in the Nebraska regiment got talking with him and mentioned one thing and another about places in the Phil/ip'ines and around Frisco, and that was about all that was said about it. I fixed up a bed for him in Mr. Collingwood's tent, and he turned in.

Q. What was the condition of his feet, if you know, the night
229 that he arrived there?

A. He had several sores on them, I think, from walking.

Q. Did he make any complaint about having sore feet?

A. He said he was sore; he had been walking in his sea boots with no socks on. One of the boys gave him a pair of boots and another a pair of socks.

Q. How was he armed that night when he arrived?

A. He had two six-shooters and a rifle.

Q. What kind of a rifle?

A. A Marlin 30-30.

Q. Did you see it that night?

A. I did; I examined it.

Q. Examine this rifle, and state whether or not you are able to say whether this is the rifle Hardy had with him the night he arrived at your camp at Otter Cove.

A. It is either that one or one just like it; the magazine was attached to it.

Q. What was the condition of the gun at that time?

A. It was in good shape.

Q. Was the gun loaded?

A. Yes, sir; I took it and unloaded it.

Q. Did you see the revolvers that he had with him when he was at your camp?

A. I did; I examined both of them.

Q. Could you identify them?

A. I think so.

Q. I will ask you to examine Plaintiff's Exhibit C, and state whether or not that is one of the revolvers the defendant had with him that night?

A. That is the .44.

Q. You are positive?

A. It is that or one just like it.

Q. I will ask you to examine Plaintiff's Exhibit D, and state
230 whether or not defendant had that revolver with him at your camp at Otter Cove on the night that he arrived there.

A. It is either that or one just like it.

Q. Do you know whether or not he had any money?

A. I never seen any that night.

Q. Do you know whether or not he had a watch?

A. Yes, sir.

Q. When did you see it?

A. I do not know if I seen it that night or not; I seen it next day.

Q. Did you examine it?

A. I just seen him have it out; no, I did not examine it.

Q. What kind was it?

A. A gold watch.

Q. I will ask you to examine Plaintiff's Exhibit J, and state whether or not defendant had either one of those watches with him when he was at your camp, if you are able to say.

A. I could not say positively, but I think it was that watch, or one just like it.

Q. Was it a gold watch?

A. Yes, sir.

Q. About that size, was it?

A. Yes, sir.

Q. Who did he tell you, if anybody, was with him at the time that he arrived at this cabin?

A. He said he had a partner with him but I do not remember his name.

Q. Do you know whether he mentioned the name or not?

A. I think he did. He could not remember his last name himself.

Q. How was the defendant dressed, if you know?

A. He had a black cap and dark coat and vest, and I do not
231 know if he had overalls or pants on, and a pair of sea boots cut off at the knees.

Q. Do you know whether or not he had any other watches with him at that time?

A. I do not know for sure.

Q. Do you know what he carried in his vest pockets?

A. I did not notice.

Q. Do you know whether or not he had anything in his vest pocket?

A. I could not see but I noticed impressions as two circles here as the impressions a watch would make.

Q. Did Hardy sleep at your camp that night?

A. Yes, sir.

Q. Did you see him the next day?

A. Yes, sir.

Q. Did you have any conversation with him the next day? Or were you present at any conversation that any member of your party had in the presence of the defendant?

A. Just talked to him generally.

Q. What, if anything, did he say that day about the rifle, revolvers, and this cabin that he found, and about leaving the fishing schooner "Arago."

A. He said that the rifle belonged to the captain; the six-shooters he had aboard the ship; he said he had one more aboard the ship that he left there; it was a .38 Army Colt.

Q. What conversation did he have about leaving the "Arago;" about when?

Mr. SULLIVAN. We object to that question as leading.

The COURT. Objection overruled.

Mr. SULLIVAN. Save an exception.

Q. The conversation that you had with the defendant about these things?

232 A. He said he came off the ship with the captain, and the captain gave him his rifle and he had the two six-shooters and they came ashore to hunt for bear. The captain offered him fifty dollars for a bear skin. They did not get any bear. They went up in the mountains to hunt for them and got turned around and were lost, and when they got back the ship had pulled out and left them. There was a cabin there and the door was fastened and they broke it open and got inside.

Q. What conversation did you have on the following morning?

A. He showed us the piece of gold he found.

Q. I want to know about the "Arago," this gun, and what he found at the cabin?

A. He said he found provisions and grub at the cabin, and a shotgun. He buried the shotgun under the floor. He wanted to go back for some provisions when Aston came back to the camp.

Q. What, if anything, did he say about Aston?

A. He said that Aston was a partner of his on the shop and he would like to see him. He mentioned that.

Q. Did the defendant at any time say anything about the time when Aston left the "Arago?"

(Objection by Mr. Sullivan as leading.)

The COURT. Objection overruled.

Mr. SULLIVAN. Note an exception.

The COURT. Exception allowed.

A. Not that morning that I know of.

Q. Did he at any time?

A. That evening; the following evening he told George when he came into camp that he seen George go to nor'ward when he left and he wanted to go and help him, but the captain would not let him, as he would run away. He did not go and on the next day he left the ship.

Q. Was Aston at your camp when the defendant arrived there?

233 A. No, sir.

Q. When did Aston return to the camp? While the defendant was there?

A. He returned the day after Fred came.

Q. Do you remember what day of the month that was?

A. It was the 18th.

Q. Were you present at any conversation that took place between the defendant and Aston?

A. No, sir; not when they were alone.

Q. When they were together, were you present when they were talking?

A. They just talked about things on the ship and asked about two or three different fellows on the ship.

Q. How long did Hardy remain at your camp?

A. Until the morning of the 20th.

Q. Who left with him, if anybody?

A. He and George left in the boat together.

Q. Did you at any time see the defendant with any money while he was at your camp?

A. I did.

Q. What kind of money was it?

A. I seen some silver and some bills.

Q. Did the defendant at any time make any statement as to the amount of money that he had?

A. Not that I know of; that I heard.

Mr. McGinn. That is all. Take the witness.

234 Cross-examination:

Q. (By Mr. Sullivan.) You say, Mr. Newton, that he stated to Mr. Aston that he left the boat the next day after Mr. Aston did; that is, the schooner "Arago," I mean?

A. Yes, sir.

Q. He was explaining that to Mr. Aston when you heard him?

A. Yes, sir.

Q. Did he say anything in that conversation about having gone ashore with the watering party of fishermen and going to the mountains for the purpose of hunting bear?

A. Not that I know of. I do not think he did.

Q. How did you say the conversation came about between him and Mr. Aston?

A. It was shortly after they first met, and he was telling George about leaving the schooner. He said that when George went to leeward the evening that he left, he wanted to take a dory and go to help him, but the captain would not let him go; said he would run away. Next day he came ashore.

Q. That is the first and only conversation you heard between George Aston and the defendant?

A. I guess it is; the only one I took notice of.

Q. That was when he and Aston apparently first met at the camp?

A. Yes, sir. George went over to the dory when they came back from prospecting to meet them.

Q. He was explaining to Aston the circumstances under which he left the "Arago?"

A. Yes, sir.

Q. Did you and Mr. Scott sleep in the same tent?

A. We did.

Q. Did the defendant stay in the same tent with you?

235 A. No, sir.

Q. What tent did he stay in?

A. One that was alongside of the tent that we stayed in.

Q. With whom did he stay?

A. He stayed alone.

Q. In one of the tents belonging to the party?

A. The first night in Mr. Collinwood's tent, and the next night in a tent that we made out of a piece of sail.

Q. You say that he arrived there on the night of the 17th, after dark?

A. Just about dark; shortly after dark.

Q. About what time of day was that?

A. I do not know what time it got dark then.

Q. You say you moved from where you were first camped to Otter Cove on the 6th of June?

A. We started from Cape Lazareff to Otter Cove on the 6th of June.

Q. What time of day?

A. Some time in the forenoon.

Q. How many days were you engaged in moving?

A. I do not know. We made about one trip a day, and made about four or five trips—about four trips.

Q. Mr. Scott went overland, did he not?

A. Yes, sir.

Q. Who accompanied him?

A. The cook, Mr. Smedley.

Q. Who went in the boat?

A. Myself, Charly Scott, and Phil. Voorhes.

236 Q. Did you go that way each trip?

A. Yes, sir.

Q. Did Scott go overland every trip you made?

A. No, sir.

Q. Was he in the boat at all?

A. No, sir.

Q. Did he go back at all?

A. He went once.

Q. Did he go in the boat?

A. He went in the boat and came back overland.

Q. When did you first move this first load in the boat from the first camp to Otter Cove?

A. On the 6th of June.

Q. What time?

A. Along in the forenoon.

Q. When did you arrive at your last camp on the first trip?

A. In the evening of the same day.

Q. When did you return to the original camp?

A. I am not sure whether it was on the next day or not; I think it was on the evening of the next day.

Q. When did you make the next trip?

A. We went back that next day; got back that night about eleven or twelve o'clock and loaded up and pulled out the same night; got into Otter Cove along in the morning about seven o'clock.

Q. On what date?

A. I believe it was on the eighth.

Q. Then did you make any other trips after that?

A. I went over and back to the old camp; went by boat and

237 came back overland.

Q. What time did you arrive at the new camp on the last trip?

A. I think it was about nine o'clock at night.

Q. What date?
A. It must have been about the 9th or 10th.
Q. Do you know what day of the week that was?
A. No, sir.
Q. You speak about leaving your original camp on the 6th of June. Do you remember what day of the week that was?
A. I do not know; I believe it was Monday. I am not sure whether it was Monday or Saturday.
Q. You and Mr. Scott and your party were engaged in prospecting, were you not?
A. Yes, sir.
Q. Were you prospecting when you arrived at the last camp?
A. Not a great deal. I did not go out at all; some of the party did.
Q. How long after the arrival of Hardy on the night of the 17th did Aston appear there?
A. Aston came to our camp from our old camp on the afternoon of the 18th when Hardy was up the pass.
Q. The old camp you speak of as being the first camp?
A. Yes, sir; Cape Lazareff.
Q. And then Aston came to the new camp and met Hardy there on the evening of the 18th or the morning of the 19th?
A. The evening of the 18th.
Q. Do you remember what day of the week that was?
A. No, sir; I do not remember.
238 Q. You are positive in regard to the 18th; simply as to the date of the month to your best recollection?
A. Yes, sir.
Q. Did you have any religious services in the camp?
A. Occasionally.
Q. Did you have them regularly on Sunday or any stated time?
A. No, sir; no set time. We generally had them on Sunday.
Q. You have no recollection as to the day of the week as to when any of these events occurred?
A. No, sir.
Q. You say Aston was over to the old camp on the 18th day of June? You say he was there the day previous?
A. Yes, sir.
Q. Do you know what Aston was doing there at the old camp?
A. He was getting some lumber with the dory.
Q. For what purpose?
A. That was lumber for sluice boxes.
Q. The lumber that you had at the old camp to move to the new camp?
A. Yes, sir.
Q. That was after Hardy had arrived at the new camp. Is that correct?
A. We got our last load of lumber the day after Hardy got there.
Q. Was he there at your new camp the time that you moved your last load from the old camp to the new camp?
A. Yes, sir.

Q. Then he arrived at the camp before you got your last load there?

239 A. Yes, sir; the last load of provisions, not the lumber.

Q. How old did you say you were, Mr. Newton?

A. Twenty.

Q. Are you acquainted with Judge Whipple?

A. Yes, sir; slightly.

Q. And with Mr. Sullivan, ex-deputy U. S. marshal?

A. Yes, sir.

Q. Have you conversed with any of them in regard to the circumstances, or what purported to be the facts in this case?

A. I do not know that I have.

Q. You have had more or less conversation with them, have you not?

A. Yes, sir; we would occasionally speak about it when I was around.

Mr. SULLIVAN. That is all.

Redirect examination.

Q. (By Mr. MCGINN.) Are you certain that Aston arrived on the 18th day of June from Lazareff?

A. Yes, sir.

Q. Might it not be on the 19th day of June?

Mr. SULLIVAN. We object to that as leading.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

A. No; it could not have been on the 19th; it was not on the 19th.

Q. How long was it after Hardy arrived at your camp? How

240 long after that Aston got there?

A. Fred got there in the evening and the next afternoon Aston got there with a load.

Q. Hardy arrived there on the evening of the 17th, was it? What did he do on the 18th, when he was at your camp?

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

The COURT. Exception allowed.

A. I did not see him—only in the morning.

Q. Were you there all that day?

A. No, sir; I went up the pass prospecting.

Q. To this creek Hardy told you about?

A. Yes, sir.

Q. Did Mr. Scott accompany you?

A. Yes, sir.

Q. When you got back that night was Aston at camp?

A. No, sir.

Q. What date was that?

A. The 18th.

Q. When did Aston arrive?

A. Aston got there on the next day after Fred went out prospecting.

Q. Who do you mean by Fred?

A. Hardy, the defendant.

Mr. MCGINN. That is all.

241 Recross-examination:

Q. (By Mr. SULLIVAN.) Mr. Newton, you say that Mr. Scott and Mr. Hardy went out on Sunday to prospect this creek?

A. I do not know whether it was Sunday.

Q. Your recollection is that Mr. Aston arrived there on the 19th, the day after they went up this creek—Scott and Hardy? That is your recollection, is it not?

A. Yes, sir.

Q. You have no positive recollection about this, have you, Mr. Newton?

A. Only what the diary stated that the cook kept; I took no particular notice as to what date he came into camp?

Q. Can you state whether or not it was Sunday that these men went up the creek?

A. I do not think it was. Mr. Scott never went out on Sunday.

Q. Do you know whether it was Sunday or not?

A. I could not state positively; it is my impression that it was not.

Mr. SULLIVAN. That is all.

Examination of Mr. Newton closed.

Judge to jury: Gentlemen of the jury you will remember what I have said to you each time when you have left the court room upon adjournment; you are not to discuss the question with anyone nor amongst yourselves nor to permit anyone to talk to you whatever.

242 You will go in charge of the bailiff and get your meals and return here at half past one.

The COURT. We will adjourn at this time until half past one o'clock to-day.

UNALASKA, ALASKA, ONE THIRTY O'CLOCK P. M.,
Tuesday, September 3rd, 1901.

All present; proceedings resumed pursuant to adjournment.

Mr. L. HANSON, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) What is your name?

A. L. Hanson.

Q. Where do you reside?

A. In Seattle.

Q. Is that your home?

A. Yes, sir.

Q. When did you leave Seattle for Alaska?

A. On the 9th of May.

Q. With whom did you leave Seattle?

A. With the schooner "Abbie Deering."

Q. Who was in your party?

A. Mr. Scott was the head of the party.

Q. Where did you go to?

A. Unimak Island.

Q. When did you arrive at Unimak Island?

243 A. On the 28th of May.

Q. What part of Unimak Island did you go to?
A. Cape Lazareff.
Q. How long did you remain at Cape Lazareff?
A. We stayed there about two weeks. For my part I was there to the 15th of June.
Q. Who remained with you from the 15th day of June?
A. Nobody.
Q. Where did the rest of the party go to?
A. They moved to Otter Cove near False Pass.
Q. When did you go to Otter Cove?
A. On the morning of the 17th.
Q. Do you know the defendant, Fred Hardy?
A. I have seen him.
Q. Where did you first see him?
A. At Otter Cove, Unimak Island.
Q. On what date?
A. The first I saw him was on the 18th, in the morning.
Q. Do you know when he arrived at your camp?
A. On the evening of the 17th.
Q. Did you see him that evening?
A. No, sir.
Q. Did you hear any conversation that he had with any person at Scott's camp that evening?
A. No, sir.
Q. Did you hear any conversation that he had with any of the Scott party on the 18th day of June?
A. Nothing very much; no more than common conversation.
244 Q. What did he say?
A. He was telling us how he got there and how he got away from the boat.
Q. Just go on and state to the jury what he said—about how he got there and how he happened to leave the boat.
A. He told us that him and the captain and another man named Nelson went ashore to hunt, and he said that the captain offered him fifty dollars to get a bear. When he got ashore he went out to the hills and was late in getting back, and the captain had pulled out and left him. He said they lit a big fire and waited for a boat to come after them, but it did not come. He said that there was a cabin there, and it commenced to rain. It was locked; so he broke the door open and went in. When they got in there was a dead man's bones lying in a bunk; the meat was all eaten off. I said: How could anything get in if the door was locked? He said there was a hole in the floor where the rats and foxes could get in. He said that he took and buried it, and he said that he went to bed and did not sleep much. He said his partner, Nelson, went out in the night and left him alone; so he left and came down to our camp. He said he was five days out and had nothing to eat. I believe the cook gave him something to eat when he got there that evening.
Q. Did he have any guns with him at that time, of any kind?
A. Yes, sir.
Q. What kind were they?
A. There was a couple of revolvers and a rifle.

245 Q. Did you see the rifle?

A. Yes, sir.

Q. What kind was it?

A. A Marlin, 30–30.

Q. I will ask you to examine this rifle (Plaintiff's Exhibit EE) and state whether or not that was the rifle that he had with him at that time or not?

A. It was a little better looking gun at that time than it is now.

Q. How does this gun correspond in size and calibre with the gun that he had at that time?

A. It looks something like it.

Q. What was the condition of the gun he had at that time, as to being rusty or not?

A. It was clean and in good order.

Q. Did he have any revolvers with him?

A. Yes, sir.

Q. Do you know the size?

A. I did not pay any particular attention to the size; I seen them; I went into the tent where he slept, and he was behind him; I looked at him and he was full of grease.

Q. Who was full of grease?

A. The revolvers.

Q. I will ask you to look at Plaintiff's Exhibit C and state whether or not that corresponds in size and appearance with one of the revolvers he had with him at that time?

A. It looks something like it. One was bigger than the other.

246 Q. I will ask you to look at Plaintiff's Exhibit D and state whether or not that corresponds in appearance with one of the revolvers he had with him at Scotts Camp on the 18th day of June.

A. It looks something like it. He was all covered with grease.

Q. Did he have a watch with him at that time?

A. Yes, sir.

Q. What kind was it?

A. It was an open-faced gold watch he had.

Q. Was it a gold watch?

A. Yes, sir.

Q. Have a chain?

A. Yes, sir; there was a chain to it.

Q. Did he tell you at that time what was contained in the cabin where he said they found this dead man?

Mr. SULLIVAN. We object to that as immaterial and irrelevant.

The COURT. Objection overruled.

Mr. SULLIVAN. We except.

The COURT. Exception allowed.

A. He said there was lots of stuff in the cabin.

Q. What kind of stuff?

A. Provisions and blankets and tobacco and a gun.

Q. Did he specify what kind of a gun it was?

A. He said it was a double barrelled shotgun.

Q. Did he say what he did with it?

A. It was left there.
Q. How long did he remain there at your camp?
A. About four days.
247 Q. How many days?
A. About four days.
Q. Do you know the date that he left?
A. I think it was on the morning of the 22nd of June.
Q. Who left with him, if anybody?
A. A fellow by the name of George.
Q. What is his other name?
A. I did not know what his other name was.
Q. When did he come to camp?
A. I do not know; I was not there then.
Q. Was he at the camp when you arrived there?
A. No, sir.
Q. How long after you were there was it that you saw George?
A. About three or four days.
Q. Did the defendant display any money while he was at your camp?
A. Not before—I did not see any money but a few silver coins before the morning he left.
Q. Did he make any statement at that time, in your presence, as to the amount of money that he had?
A. No, sir.

Mr. McGinn. You may cross-examine the witness.

248 Cross-examined:

Q. (By Mr. Sullivan.) Mr. Hanson, are you familiar with rifles, guns, and pistols, and did Mr. Scott, Mr. Newton, and yourself and each one of you examine this rifle at that time? Did you examine it at that time?
A. Yes, sir.
Q. Did Mr. Newton examine it at that time?
A. I do not know.
Q. Did Mr. Scott examine the rifle at that time? At the time you say Mr. Hardy came to camp?
A. I seen it.
Q. Did you examine it?
A. I seen it; yes.
Q. Did Mr. Hardy place it in the hands of Mr. Scott?
A. I do not know.
Q. Did he place it in the hands of Mr. Newton?
A. I do not know.
Q. You did not see him place it in the hands of either of them?
A. No, sir.
Q. Did he give it to you for examination?
A. No; one of the boys went out hunting with it.
Q. When you first saw it who had it?
A. He had it.
Q. What did he do with it?
A. Nothing.
Q. Kept it in his hands?
A. Put it in his tent.

Q. When did you next see it and where?
249 A. Next morning after he came.
Q. Did he have it then?
A. Yes, sir.
Q. Did he show it to you?
A. He showed it to everybody.
Q. Did he show it to you?
A. No.
Q. Did you take the rifle in your hands and examine it at that time?
A. I do not know whether I did at that time or not.
Q. He handed it to you, did he?
A. No, sir.
Q. Who was it?
A. I do not know.
Q. Well, who was it?
A. I do not know.
Q. Did you see Mr. Scott examine this rifle?
A. No, sir.
Q. Did you see Mr. Newton examine it?
A. No, sir.
Q. Did you see any other party?
A. No, sir.
Q. Did you see anyone examine this rifle and look at it?
A. I seen young Scott have it.
Q. Did you see anyone besides the defendant have it?
A. I saw young Scott have it.
Q. Where is young Scott?
A. Down to Unga.
Q. Is he here?
250 A. I do not know whether he is here or not.
Q. Have you seen him here since you have been in Unalaska?
A. Yes, sir.
Q. He is in Unga, is he?
A. His son is down to Unga.
Q. The son of the Minister Scott is the young man? Have you seen him since you have been in Unalaska or Dutch Harbor?
A. He has not been here.
Q. You saw him have the gun?
A. He got the gun and went hunting with it.
Q. Did he give it to you to look at?
A. No, sir.
Q. Who did he give it to to look at?
A. No one that I know of.
Q. Who looked at it except young Scott?
A. I do not know.
Q. Who handed it to you?
A. I do not remember.
Q. When was it handed to you?
A. I do not know.
Q. Did you see Minister Scott examine that gun?
A. I do not know whether I did or not.

Q. Did you see Mr. Newton examine that gun in his own hands?
A. I do not know.
Q. Did you see anyone examine that gun with their own hands?
A. I do not know; they handed it from one to the other and looked at it.
Q. You were entirely familiar with guns of this make before you came to Unimak Island, were you not?
251 A. Yes, sir.
Q. Is this gun a smokeless gun or not?
A. That is a repeating Marlin gun.
Q. Is it a gun that would use powder that was smokeless or powder that was not smokeless?
A. I could not tell you.
Q. Were you familiar with smokeless guns before you came to Unimak Island?
A. Yes, sir.
Q. Where did you ever use a smokeless gun? At what place?
A. There are lots of them that use smokeless powder and other kinds.
Q. In what country was that?
A. At home and everywhere.
Q. Give me one place.
A. In Seattle.
Q. In Tacoma?
A. I never was in Tacoma. I had a gun myself that used smokeless powder.
Q. What town was that in?
A. It was in Seattle.
Q. When was that? What day?
A. Two or three years ago.
Q. How many years ago?
A. I could not tell.
Q. Was it ten years ago? Was it twenty years ago?
A. I do not know.
Q. How long ago did you live in Seattle?
A. I lived there seven years.
252 Q. How long ago from now did you live in Seattle?
A. About four months.
Q. Preceding that four months, how long before that four months did you live there?
A. Six or seven years.
Q. Where did you live in Seattle?
A. At Fremont.
Q. Is that in Seattle?
A. Yes, sir.
Q. Did you have a gun at Fremont that used smokeless powder?
A. Yes, sir.
Q. What was your occupation in Fremont?
A. A blacksmith.
Q. For what did you use a gun in Fremont?
A. For hunting deer.
Q. In the incorporated limits of Seattle?

A. I would go into the mountains.
Q. Did you have a gun similar to this in Seattle?
A. No, sir; I never had one like that.
Q. How many deer did you kill while you were a blacksmith?
Mr. McGINN. We object to that as incompetent and immaterial.
The COURT. Objection will be overruled.
A. I used a Winchester.
Q. And that is what you call using a smokeless gun, is it?
A. No, sir; I can buy smokeless or black powder, just as I please.
Q. You used a Winchester?
A. Yes, sir.
Q. Is this a Winchester?
253 A. No, sir; it is a Marlin.
Q. Where did you first discover that it was a Marlin rifle?
A. I know what a gun is; I used to be a gunsmith.
Q. What make do you say this is?
A. It is a Marlin.
Q. Did you ever handle one like this before?
A. No, sir.
Q. Is this the first you ever saw?
A. No, sir.
Q. Where did you ever see them?
A. In Seattle.
Q. Who had them?
A. In hardware stores.
Q. Does all the hardware merchants there keep them?
A. Yes, sir.
Q. Where was that gun made?
A. I could not tell you.
Q. Do you know what country that is made in—United States, Germany, or England?
A. No, sir; I have not studied the subject.
Q. You say you saw a gold watch on the defendant?
A. Yes, sir.
Q. Did he show that gold watch to you?
A. No, sir.
Q. Did he show it to anyone else in your presence?
A. Not that I know of.
Q. You saw him take it out and notice the time of day?
A. Yes, sir; he took it out very often.
Q. And from the frequency that he took this watch out of his
254 pocket you identify this watch?
A. Yes, sir.
Q. Did you see him have either one of these watches?
A. No, sir.
Q. You are sure of that?
A. I did not see them; no.
Q. You understand my question?
A. Yes, sir.
Q. Did he take that pistol and show it to you?
A. It was lying in the camp.

Q. Did he show it to you?
A. It was laying on a box there.
Q. Who showed you the pistol?
A. I seen it laying there.
Q. Did you take it up and examine it?
A. Yes, sir.
Q. Was this the pistol?
A. It looked something like it.
Q. Have you ever been raised in a pistol factory?
A. No, sir.
Q. The other pistol is of that same make, are they not?
A. I do not know.
Q. Did you ever handle a gun?
A. Yes, sir.
Q. Who showed you that pistol?
A. I saw it laying on the box. I picked it up and looked at it. It was full of grease.
Q. Did he pass that pistol to Mr. Scott?
255 A. No, sir.
Q. Did he pass it to Mr. Newton?
A. No, sir.
Q. To any other man in your crowd?
A. No, sir; not that I know of.
Q. Did you ever see this pistol before?
A. I guess I have.
Q. Where did you see that?
A. Alongside of the other.
Q. On the same box?
A. Yes, sir.
Q. Who showed it to you?
A. I saw it laying on the box.
Q. Did you see him pass that pistol, the defendant in this case, to yourself?
A. No, sir.
Q. Did he pass it to Mr. Scott?
A. Not that I know of.
Q. Did he pass it to Mr. Newton?
A. Not that I know of.
Q. To any other party in the crowd?
A. Not that I saw.
Q. And the only place you saw these pistols was on the box?
A. Yes, sir. On the morning they went away he strapped one on him, and the other George had.
Q. Where was this rifle—was that on the box, too?
A. No, sir.
Q. Where was that?
A. It was in the tent; the boys were going hunting with it.
256 Q. Who was in the tent at the time that you saw it?
A. It was in our camp.
Q. Who was in the tent at the time that you saw this rifle?
A. I do not know; I could not tell.

Q. What date was it that you saw the rifle?
A. The 18th of June.
Q. And you do not know who was in the tent when you saw this rifle?
A. I do not know; they were coming out and in.
Q. They were going out and in when you saw the rifle in that tent; is that correct?
A. Yes, sir.
Q. When did you say Mr. Aston left there?
A. Who?
Q. You know a man by the name of George?
A. Yes, sir.
Q. Do you mean George Aston? Do you know George Aston?
A. I have seen him.
Q. When did he leave that camp?
A. He left on the 22nd of June.
Q. Of June this year?
A. Yes, sir.
Q. Where did you live before you went to Seattle?
A. Snohomish, Snohomish County, Washington.
Q. How long did you live in Snohomish?
A. About twenty years.
Q. At Snohomish City?
A. Yes, sir.
Q. What was your occupation there?
257 A. A blacksmith.
Q. And before you came to Snohomish where did you live?
A. In Norway.
Q. Were you born in Norway?
A. Yes, sir.
Q. You came direct to Snohomish from Norway?
A. Yes, sir.
Q. You never lived in any other part of the United States?
A. I have been around the Sound some.
Q. What was your occupation while you were in Norway?
A. I was a blacksmith.
Q. How old were you when you entered into the trade of blacksmith?
A. About twelve years.
Q. Have you followed it up continuously ever since, until you came to Unimak Island?
A. Pretty much.
Q. How old a man are you?
A. I am about fifty.
Q. Are you fifty or more or less?
A. I am fifty.
Q. When did you go to the United States? How many years ago?
A. I came in 70 or 71.
Q. That is the years 1870 or 1871 that you came?
A. Something like that.

Q. Until you came to Unimak Island you have been following the occupation of a blacksmith?
A. Yes, sir.
Q. Always been a hard-working man as a blacksmith?
A. Yes, sir. I have had to work for all I got.
258 Q. You have always worked, have you not, when you had an opportunity?
A. Yes, sir.
Mr. SULLIVAN. That is all.

259 Redirect examination:

Q. (By Mr. MCGINN.) Mr. Hanson, are you a little hard of hearing?
A. Yes, sir.
Q. What is that caused from?
A. From going in bathing and getting salt water in my ears.
Q. Did you see any other rifle around Scott's camp?
A. None but our own.
Q. What make was that?
Mr. SULLIVAN. I object to the question, that it is immaterial, irrelevant, and not redirect examination.
The COURT. Objection overruled.
Mr. SULLIVAN. We save an exception.
The COURT. Exception allowed.
A. A Winchester.
Q. What kind of cartridges did you use for that rifle, black or smokeless powder?
Mr. SULLIVAN. We object to that as immaterial and irrelevant.
The COURT. Objection overruled.
Mr. SULLIVAN. Exception.
The COURT. Exception allowed.
A. I do not know what kind of powder it was; black or smokeless; I never was out hunting with it.
Q. Where did you see these revolvers—in whose tent at Scott's camp?
A. In Hartly's tent.
Q. What tent did Hardy occupy while he was there?
A. He occupied his own.
Q. Hardy's tent?
260 A. He stayed in Collinwood's tent.
Q. Was Collinwood there at that time?
A. No, sir.
Mr. MCGINN. That is all. Take the witness.

261 Recross-examination:

Q. (By Mr. SULLIVAN.) Mr. Hardy then slept by himself?
A. What do you say?
Q. Hardy slept by himself?
A. Yes, sir.
Q. Did you say you were born in Norway or Sweden?
A. I was born in Norway.
Q. At what place?
A. At Larwich.

Mr. McGINN. I object to that question.
(No ruling.)
Q. How many years ago?
A. About fifty years ago.
Q. You left there when?
A. I left there about '69 or '70.
Q. (By Mr. McGINN.) Is it not a fact that you can use either smokeless powder or black powder in a Springfield, Marlin, or in any rifle?
A. You can use either.
Q. (By Mr. SULLIVAN.) Now, as a matter of fact, smokeless-powder guns were used frequently around Seattle while you were there, were they not?
A. I lived in Fremont.
Q. Fremont is a part of Seattle, is it not?
A. Yes, sir.
Q. They were used by most of the hunters there, were they not?
A. I do not know whether they were or not.
262 Q. You went hunting frequently?
A. Yes, sir.
Q. You used a smokeless gun while you were in Seattle?
A. Yes, sir.
Q. What did you use?
A. I used smokeless.
Q. Did you see any other hunters?
A. Yes, sir.
Q. Did they use smokeless?
A. Some of them did.
Q. They were in constant use all the time you were there, were they not?
A. Yes, sir.
Q. You saw them before you came from Sweden to the United States, did you not?
A. No, sir.
Q. When did you first see them when you came to the United States?
A. In Snohomish.
Q. How long after you reached the United States did you see them?
A. I could not tell that.
Q. The hunters around Snohomish City and Seattle used them altogether, did they not?
A. No, sir.
Q. When did you first go to Snohomish?
A. It was in '69 or '70.
Q. When did you leave there?
A. I left there about seven years ago.
Q. You hunted deer down there with this smokeless powder at that time, did you not?
263 A. No, sir.
Q. You never had a smokeless gun in Snohomish City?
A. No, sir.
Q. Did you ever have one in Seattle?
A. Yes, sir.

Q. You did not hear me a while ago when I asked you if you had a smokeless gun in Snohomish, did you?
A. I did not use smokeless powder in Snohomish.
Q. Then you did not hear me when I asked you the question?
A. No, sir.
Q. Are you sure your gun in Seattle used smokeless powder?
A. Yes, sir.
Q. Do you understand my question?
A. Yes, sir.
Q. Then tell the jury what my question was.
A. If I used smokeless powder in Seattle.
Q. And your answer was that you did?
A. Yes, sir; that I did.
Mr. SULLIVAN. That is all.
Mr. MCGINN. That is all.
Testimony of Mr. Hanson closed.

264 G. H. COLLINWOOD, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:

Q. (By Mr. McGINN.) What is your name?
A. George H. Collinwood.
Q. Where were you born?
A. In Pennsylvania.
Q. How old are you?
A. Fifty-three years.
Q. What is your occupation?
A. Miner, for the past few years.
Q. How many years.
A. More or less since '77.
Q. Where did you come from to Alaska?
A. Came from Seattle.
Q. When did you leave Seattle for Alaska?
A. I left this spring, on the 9th day of May.
Q. With whom did you leave at that time?
A. With Mr. Scott and party.
Q. Where did you go?
A. We went to Unimak Island.
Q. To what part of Unimak Island?
A. To the southeastern part.
Q. When did you arrive there?
A. On the 28th day of May.
Q. Where did you pitch your camp?
A. Right in a little bay, north of Cape Lazareff.
Q. How long did you remain there?
A. I remained there up until the 6th day of June.
Q. Then where did you go?

265 A. Myself and Charles Scott, a brother of Mr. Scott here, went around the island on the south to cross over on the north and west side of the island.
Q. Can you tell the jury where on this map Cape Lazareff is?

A. It is over here next to False Pass. Here is the place where we camped—a river runs out into the sea, and we camped in the cove right here.

Q. And you remained there until the 6th day of June?

A. Yes, sir.

Q. Where did you go then?

A. We went around along towards Unimak Pass on the south side.

Q. Who accompanied you on that trip?

A. Mr. Charley Scott.

Q. Can you trace upon the map the course that you took?

Mr. SULLIVAN. We object to that.

(Argument by Mr. McGinn: That he would show that Mr. Collinwood had been on the beach on the north side of the island and that he saw fresh footprints on the 8th day of the month; and would show that these were the footprints of Mr. Jackson.)

Mr. SULLIVAN. We object to that on the grounds that it is immaterial and irrelevant and hearsay, and in no way connected with the defendant.

The COURT. Objection will be sustained.

Q. How long were you gone on that trip?

A. From the 6th to 14th.

Q. Where did you go?

A. We went around and camped about eighteen or twenty miles on the first day, and then south to the barren mountain.

266 Q. Did you go in the direction of Cape Lapin?

A. No, sir; it was on the south side of the island.

Q. Were you at any time while you were on that trip close to Cape Lapin?

A. I do not know. I did not know where Cape Lapin was. I have seen it on the map since. I suppose we must have been about seven or eight miles from Cape Lapin.

Q. When did you return from that trip?

A. We got home on the 14th day of June.

Q. Where was Scott's camp at that time?

A. At Otter Cove.

Q. Where did you go? Did you go to Otter Cove or to Cape Lazareff?

A. I went to Otter Cove.

Q. Who was at Otter Cove when you arrived there?

A. Mr. Scott and Cecil and I forget who else; part of them was at Cape Lazareff and part of them was at the camp. I think Mr. Hanson was over at Cape Lazareff. Mr. Scott was there, myself, Cecil, the cook, and I believe there was one of the other boys there.

Q. Was George Aston there?

A. No, sir.

Q. How many days was it after you were——

Q. Do you know where Aston was at that time?

A. I have no knowledge of Aston, only what they told me.

Q. How long was it after you arrived at Otter Cove that you saw Aston?

Mr. SULLIVAN. We object to that question.

The COURT. Objection overruled.

267 Mr. SULLIVAN. We save an exception.

The COURT. Exception allowed.

A. I arrived on Friday, the 14th, and on Saturday evening of the 15th, about five or six o'clock in the evening, they came from over there with the balance of the boys and George with them.

Q. How long did he remain there?

A. We remained in camp until Monday morning on the 17th and him and I went over after the boat. The boat was already over there to get the lumber. We went over on the 17th and gathered up some lumber and got ready to load up next morning.

Q. Where was that?

A. That was at Cape Lazareff.

Q. When did you return to the camp?

A. On Wednesday.

Q. What day of the month was that?

A. That was on the 19th, on Wednesday.

Q. What part of the day was it?

A. About 5 or 6 o'clock in the evening.

Q. Was there anybody with you on that trip besides Mr. Aston?

A. No, sir.

Q. Do you know the defendant, Fred Hardy?

A. I have met him.

Q. When did you first meet him?

A. On the evening of the 19th.

Q. Where?

A. At Scott's camp; our camp.

Q. At what place?

A. At Otter Cove.

Q. Did you have any conversation with him or did you hear
268 any conversation that was had with him relative to the rifle that he had with him, the revolvers, or about him leaving the schooner "Arago" and about going to a cabin?

A. Yes, sir.

Q. Did you hear any that night?

A. I did not have any conversation with the defendant that night.

Q. When did you have a conversation?

A. Next morning.

Q. Please relate what that conversation was.

A. I asked him in regard to this man. The reason I asked him the question was——

Q. About what man?

A. This man they found in the cabin. He said that he came off the "Arago," and that him and the captain came off of the "Arago" and went out hunting. They went up looking for bear and the captain had stayed behind, and that they went up and got back and the boat had gone and left them, so they stayed for the night; they found a cabin there.

Q. Who stayed?

A. Him and his partner.

Q. Did he say what his name was?

A. No, sir. He said that they found the cabin and broke it in and that a man was dead in the cabin, and they took him out and buried

him. I said "Why did you bury that man without reporting it to the authorities?" and he did not answer the question.

Q. What did he say in reference to where he got the rifle?

269 A. He did not say anything in reference to where he got the rifle, but he said that there was lots of things there. Plenty of grub and provisions and he had found a fine shotgun which he had hid under the floor.

Q. Did you see the rifle that he had with him at that time?

A. Yes, sir.

Q. Did you examine it?

A. Yes, sir.

Q. Do you know what kind of a rifle it was?

A. It was a 30–30 Marlin.

Q. What condition was it in?

A. It was in fine condition.

Q. I will ask you to examine this rifle?

A. It was in better condition when I seen it.

Q. State whether or not that corresponds with the size and calibre of the rifle you saw Hardy have at your camp.

A. Yes, sir; it is a fac-simile of the gun.

Q. What was the condition of the stock of the gun?

A. The stock was in good condition so far as I could see. It was bright and nice.

Q. Did you see him have any revolvers with him at that time?

A. I came home that night with Mr. Aston. I went into my tent and the defendant had slept two nights in my tent when I was gone. When I went into my tent I saw a pistol with a scabbard on it lying on the pillow of my bed.

Q. I will ask you to examine plaintiff's Exhibit E and state whether or not it is the scabbard he had with him at that time.

Mr. SULLIVAN. We object to that question.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

270 A. I think the scabbard I seen on the pistol was a different scabbard from this. It was not closed, I do not think.

Q. You do not know whether that is the scabbard or not?

A. No, sir.

Q. Did you examine the revolver?

A. Yes, sir.

Q. What was the make?

A. Colts.

Q. What was the caliber?

A. I do not know; I should judge, .44 or .45.

Q. Examine plaintiff's Exhibit C and state whether or not that was the revolver.

A. Yes, sir; to the best of my knowledge. I noticed that writing on the handle.

Q. Did you see any other revolver?

A. Yes, sir; I saw one, but did not examine it. I saw it was a Colts. I could not testify to it.

Q. Do you know whether or not the defendant had a watch with him?

A. No, sir. He had a watch. Yes, sir, at least he had a watch chain; I did not see the watch.

Q. Did you notice whether or not he carried anything in his two upper vest pockets?

A. Yes, sir; it was an impression in both of the upper vest pockets. I supposed it was a watch, but did not make any inquiry.

Q. Did the defendant display any money in your presence?

A. No, sir.

Q. Did he ever make any statement in your presence as to whether he had any money on him or not?

271 A. No, sir; he did not.

Q. How long did the defendant remain at your camp?

A. He remained until next morning about 9 o'clock, when they went away.

Q. Who do you mean, "When they went away?"

A. Mr. Aston and the defendant.

Q. Did they leave together?

A. Yes, sir.

Q. Did you accompany them to the shore?

A. Yes, sir.

Q. Did you assist them in bringing down their boat?

A. Yes, sir; I assisted in carrying the boat across.

Q. Do you know whether or not on the night that you arrived there—the night that you saw Hardy, on the first night that you got back to camp—whether or not Hardy called Aston outside the tent and had a conversation with him?

A. Yes, sir; they had a conversation.

Q. How long was it after that conversation that Hardy and Aston had; was it before they left?

A. I suppose from about 9 or 10 o'clock in the evening until about 3 or 9 o'clock next morning.

Q. Did the defendant have any ammunition with him when he was at your camp?

A. I did not notice.

Q. Do you know whether he carried an ammunition belt?

A. No, sir; I could not say that he did.

Q. Did Hardy display any jewelry of any kind?

A. No, sir; I did not see any jewelry.

Q. Did you see a scarf pin?

A. No, sir.

272 Q. This conversation that you state took place between Hardy and Aston, was that apart from the rest of the people who were there?

A. Yes, sir; they were all by themselves. I could not hear what they said.

Q. Is it not a fact that Hardy called Aston out of the tent to have that conversation?

Mr. SULLIVAN. We object to that as immaterial and leading.

The COURT. Objection sustained.

Q. Do you know whether or not Aston went out there voluntarily to have that conversation, or at his own instance?

Mr. SULLIVAN. We object to that question.

The COURT. Objection sustained.

Q. What occurred before Aston and Hardy left the tent and went out to have this conversation?

A. Well, I did not pay much attention. I just passed and went to my tent and went to bed.

Q. What did the defendant do to prevent you hearing that conversation?

A. I do not know; they went off by themselves to talk.

Mr. MCGINN. That is all; take the witness.

273 Cross-examination:

Q. (By Mr. SULLIVAN.) Are you acquainted with Lieutenant Landry?

A. No, sir.

Q. Never saw him before?

A. No, sir. Well, I think I did meet the gentleman last spring.

Q. Have you met him in the month of August?

A. No, sir.

Q. He is present now, is he not?

A. Yes, sir.

Q. When did you first meet Mr. McGinn?

A. I met him here in this place.

Q. In the court room?

A. No, sir; it was in the grand jury room.

Q. Have you ever had any conversation with him?

A. I have passed the time of day with him.

Q. Did you ever speak to him about the condition of the weather, or anything of that kind?

A. Yes, sir; always said it was very fine.

Q. Mr. Collinwood, you speak of going home with the party on the 14th day of June?

A. Yes, sir.

Q. Do you mean by home Mr. Scott's camp?

A. Yes, sir; Scott's camp at Otter Cove.

Q. That was Friday, the 14th?

A. Yes, sir.

Q. The 15th was Saturday?

A. Yes, sir.

Q. Who did you meet on arriving at the camp on the 14th?

A. Mr. Scott, Mr. Smedley, and Cecil Newton.

274 Q. Was Charles Scott there?

A. No, sir.

Q. When did you first meet Charles Scott?

A. I met him when I met Mr. Scott.

Q. Where is he now?

A. He is at Unga.

Q. Where is Unga?

A. It is an island adjacent to this place in Alaska, about 270 miles from here. No, sir; about 268 miles.

Q. He is a son of Mr. Scott, who was on the stand this morning?

A. Yes, sir; that is what they claim.

Q. What was the party doing during that time?
A. We were prospecting. We were prospecting more or less while I was there until I went on that trip.
Q. You say you examined this gun and pistol?
A. I did; yes, sir.
Q. Did I understand you to say you found this on the pillow?
A. Yes, sir.
Q. When you examined it you found it on the pillow?
A. Yes, sir.
Q. The defendant occupied your tent while you were away?
A. Yes, sir; two nights.
Q. You found this gun on the pillow?
A. Yes, sir.
Q. You took it up and examined it?
A. Yes, sir; examined it thoroughly.
Q. That is the first time you saw it?
A. Yes, sir.
275 Q. The defendant did not show it to you?
A. No, sir.
Q. Have you ever seen that pistol since that time—before you went on the witness stand to-day?
A. I saw it to-day and yesterday.
Q. Never saw it before?
A. No, sir; not since the time he left; the last morning when he went away, on the 20th.
Q. Are you positive about your dates?
A. Yes, sir.
Q. What date did you see this pistol?
A. The first time I saw it was on the evening of the 19th, about six o'clock in the evening.
Q. What time of that day did you return to the camp?
A. About five, or half-past five.
Q. When is the date you say you first saw Aston?
A. I saw him on the 15th.
Q. Now, if you returned on the 19th, where were you on the 14th and 15th?
A. We were at home.
Q. Were you at Scott's camp?
A. Yes, sir.
Q. Whose tent did you occupy?
A. I occupied my own.
Q. And on the 19th you saw this gun on your pillow?
A. Yes, sir.
Q. Where were you on the 16th, 17th, and 18th?
A. On the 16th or 17th I started for Cape Lazareff.
Q. What did you do there?
276 A. I went there to get our lumber.
Q. After you got there what did you do?
A. We got some lumber ready to load up next morning.
Q. When did you go to Otter Cove?
A. On Wednesday night.

Q. What date of the month was it?
A. On the 19th.
Q. Where were you on the 16th?
A. Sunday was the 16th. I was at camp.
Q. Where were you on Saturday night preceding Sunday?
A. I was at home.
Q. In your own tent? Slept there?
A. Yes, sir.
Q. What time on the 16th did you leave that camp?
A. I left on the 17th.
Q. You left for the old camp?
A. Yes, sir.
Q. How many days were you gone?
A. We were gone three days.
Q. It took you three days to make the trip, did it?
A. Yes, sir.
Q. Then, it was the 20th when you returned?
A. No, sir; it was the evening of the 19th.
Q. What day did you leave the camp?
A. I left on the 17th.
Q. What time did you get back—on the 17th?
A. I got back on the 19th.
Q. At what time?
A. About six or seven o'clock.
277 Q. What time did you leave on the 17th?
A. About 6 or 7 o'clock in the morning.
Q. When you speak of a man named George, do you mean Aston?
A. Yes, sir.
Q. How long had you known George before you met him at that camp?
A. I never met him at all.
Q. You had never seen him before that?
A. No, sir; not to my knowledge.
Q. Have you ever met him since you have been at Unalaska?
A. Yes, sir; he is around every day.
Q. You have talked to him about the case?
A. Yes, sir; I talked to him.

Mr. SULLIVAN. That is all. Take the witness.

278 Redirect examination.

Q. (By Mr. MCGINN.) Mr. Collinwood, did you ever see Aston with a gun of any kind.

Mr. SULLIVAN. We object to that question.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

Q. While George Aston was at your camp did you ever see him with a revolver, rifle, or gun of any kind?

Mr. SULLIVAN. We renew our objection to that question.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

The COURT. Exception allowed.

A. Not that I know of. I never seen him with any firearms on him until the morning of the 20th, when he went away with the defendant.

Q. What did he have with him at that time?

A. He had that small revolver.

Mr. McGINN. That is all.

Mr. SULLIVAN. No questions.

Examination of Mr. Collinwood closed.

279 Mr. GEORGE ASTON, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:

Q. (By Mr. McGINN.) What is your name?

A. George Henry Aston.

Q. Where were you born?

A. Milwaukee, Wis.

Q. In what year?

A. In 1865.

Q. What is your occupation?

A. A seafaring man.

Q. How long have you been a seafaring man?

A. Off and on for fifteen years.

Q. How long have you been in Alaska?

A. I have been in Alaskan territory and waters since May.

Q. Of what year?

A. 1901.

Q. Where were you before coming to Behring waters?

A. In the city of San Francisco.

Q. On what boat did you come to Alaska?

A. The fishing schooner "Arago."

Q. In what capacity?

A. Fisherman.

Q. When did you leave San Francisco?

A. In the latter part of March or first of April.

Q. Do you know the defendant, Fred Hardy?

A. I have been shipmates with him.

Q. On what boat?

A. On the fishing schooner "Arago."

Q. Did he leave San Francisco the same time you did?

280 A. He was aboard the schooner "Arago" at the same time I was, on the dock in San Francisco previous to sailing, and was with us all during the voyage until the day we left the schooner in the Behring Sea.

Q. Did you know Fred Hardy before you first met him in San Francisco?

A. I had seen him in San Francisco.

Q. How long before?

A. On the dock a day or two before the schooner was towed into the stream.

Q. When did you first become acquainted with him?

A. A few days after being aboard the schooner.

Q. When did you arrive in Behring waters?

A. We had about thirty-six days passage from San Francisco.

Q. How long did you continue on the "Arago"?
A. Until the first Sunday in June.
Q. Do you know the date?
A. I believe it to be the second.
Q. How was it that you came to leave the boat?
A. I went fishing in the dory Number Eleven, and got down to leeward in the afternoon; it was some time between twelve and two o'clock when I left the schooner, and I went toward Snapper Island with the dory.

Mr. SULLIVAN. We object to that as immaterial and irrelevant and cross-examination of their own witness.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

The COURT. Exception allowed.

281 When I pulled the dory up alongside of the schooner I threw a lunch and the larder breaker aboard. I had to get some fresh bait and filled that with salt herring; put it into the dory and got into it. I pulled around to the stern of the vessel and stayed a while; the wind drifted me to leeward faster than I could go ahead; I took the sail down and took the oars; I let go the anchor in order to fish. I had not succeeded in catching any fish.

Q. Just state why you left the boat; how you left it?

Mr. SULLIVAN. We object to that as immaterial.

The COURT. The objection will be sustained.

A. I spent the night in the dory, between the schooner "Arago"——

Mr. SULLIVAN. We object——

We spent the night—the afternoon and that night—in the dory at sea, between the schooner "Arago" and Snapper Island, an island that lies off a little to the northward of False Pass. The next day I endeavored to return to the vessel, but could not.

Q. Where did you go next day?

A. Next day I landed on the Behring Sea side of Unimak Island, about a mile to the westward of False Pass.

Q. I wish you would examine this map and point out on it where you landed?

A. It was on this point here; on this sand spit.

Q. On what day was that?

A. It would be Monday, June 3rd.

Q. Where did you spend the night of June 3rd?

A. With some natives in camp.

Q. Where did you spend the night of the 4th?

A. I spent the night of the 4th also with these natives.

282 Q. Where did you spend the night of the 5th?

A. In Charley Rosenberg's schooner in the bay close to Marzovio.

Q. Where was that?

A. Right here.

Q. What point is that?

A. This is about the place where Charley Rosenberg's schooner lay when I was in it.

Q. What do you call it?

A. It is just off Marzovio.

Q. Where did you spend the night of the 6th?
A. In the same place.
Q. With whom?
A. In Charley Rosenberg's schooner.
Q. What did you do the next day? Where did you go?
Mr. SULLIVAN. We object to that.
The COURT. Objection overruled.
Mr. SULLIVAN. Note an exception.
A. Next day I went to a place called "Range Bight," a sand spit that divides False Pass from a place called Otter Cove.
Q. How did you go there?
A. In a dory.
Q. That was on the seventh day of June, was it?
A. Yes, sir.
Q. Who, if any person, did you meet there?
A. I met several members of the crew and some of the officers of the United States cutter "McArthur."
Q. Who else did you meet?
A. Several members of a prospecting party.
Q. Who were they?
283 Mr. SULLIVAN. We object to that as immaterial.
The COURT. Objection overruled.
Mr. SULLIVAN. We save an exception.
The COURT. Exception allowed.
A. I did not know their names at the time, but I afterwards learned.
Q. Who were they?
A. A man by the name of Scott, Smedley, a young man by the name of Charley Scott, and two others; one named Cecil Newton and another; a fellow by the name of Phil; I do not know what his last name is?
Q. Where were they camped?
A. Right close to the bluff on the lower edge of the le'ward neck of the sand spit on the Pacific side of Unimak Island on the northeast shore of Otter Cove.
Q. How long did you remain there?
A. I remained at their camp or was with members of their party until the morning of the 20th day of June.
Q. While you were at that camp did you meet the defendant, Fred Hardy?
A. Yes, sir.
Q. When did you meet him?
A. On the evening preceding the day on which I left the camp.
Q. What day was that?
A. That was about the 19th of June, 1901.
Q. Was he away from the camp when you got there?
A. Yes, sir.
Q. Where had you been immediately prior to that?
A. With Mr. George Collinwood over to Cape Lazareff.
284 Q. You got back to Otter Cove and saw the defendant, Hardy, there?
A. Not at the immediate time.
Q. How long was it before he put in an appearance?

A. Possibly two or three hours.

Q. Did you have any conversation with the defendant that night?

A. I did.

Q. Were you present at any conversation that was had in his hearing and with him?

A. I was.

Q. I wish you would go on and state what these conversations were.

A. The first conversation I had with Fred Hardy was at a little distance from the tent of the prospecting party—between there and False Pass. He was then going towards the tents. I saw him and spoke to him. I asked him how he got there and made two or three other remarks to him, I do not exactly remember now, and accompanied him.

Q. What did he say?

A. He told me that he had come ashore—come ashore—but I believe that he also stated to me how he came ashore; that he and another party by the name of Charley had come ashore, but I do not distinctly remember whether Hardy told me at the time what their reasons for coming ashore were. I went with Fred Hardy over to the tent used as a mess tent by the members of the Scott party.

Q. What, if any, conversation did you have there?

A. The members of the party were all more or less engaged in a conversation over a prospect which they believed to have found up
285 somewhere on False Pass and which they had been directed to or shown.

Mr. SULLIVAN. We object to that.

(No ruling.)

I heard several remarks made about some particles of gold that they had found.

(Objection by Mr. Sullivan.

No ruling.)

Q. What conversation did you have with Hardy, or hear Hardy make, in regard to his having left the schooner "Arago" and about these provisions that he claimed to have found?

A. Hardy made a remark in my hearing, I believe, that evening about finding several articles in a cabin, but just to distinctly state that Fred Hardy at the time mentioned particularly where he found these things I could not say now. I had obtained the knowledge from other parties.

Q. Did you have any conversation with him that night separately and away from the rest of the party?

A. I did.

Q. State what that conversation was.

A. I went out with Fred Hardy a little ways from the mess tent. There were four tents—two large wall tents and one little "V" tent and one octagonal. Hardy and I had a conversation over near to the octagonal tent. I asked Hardy concerning parties aboard the schooner "Arago" and made remarks upon how the fishermen were getting along, what success they had, and how the boys were feeling. I also asked Fred Hardy concerning the story I had heard in camp when I returned. Hardy told
me that he had—I believe, to the best of my recollection, that he
286 first told me that he found the articles of which he had spoken, and of which I heard he had spoken. He found them in a cabin,

and he stated to me that they were not in a cabin—that they were in a tent. He also stated to me that he had asked the cook of the Scott party to accompany him to where they were. He also stated that he did not want that cook to go. He also asked me to accompany him to a point on Behring Sea.

Q. Did he give any reason why he did not want the cook to go?

A. Yes, sir; that he had found these articles in a tent and not in a cabin.

Q. What else did he state there?

A. That he had money enough to help me and himself; that he wished me to accompany him to this point on Behring Sea and obtain possession of these goods; and he also asked me during the conversation to request Mr. Scott not to allow Smedley, the cook, to accompany us; he also stated that he did not; that he wanted to get into civilization; he was tired of the life he had been leading—possibly not in these exact words; he also displayed to me some money in a wallet, also some in a small buch bag; some of the money was in bills—at that time I could not discern the denomination; there was some silver in a small purse, the amount I did not note at the time.

Q. Did he state anything as to the amount of money that he had?

A. Yes, sir.

Q. What did he say?

A. He said he had twelve hundred dollars; he also stated that, "you know I did not have that money aboard the schooner; that I must have got it somewhere."

287 Q. What did he propose to do with this money, if anything?

A. To get into civilization and start a saloon.

Q. Did he say anything about taking you in with him?

A. Yes, sir.

Q. What did he say?

A. He asked me to go with him as a partner—the exact words I can not get.

Q. Did he say to you anything that night as to where he had gotten the rifle?

A. I believe he did; just at the present time I am not positive; I believe he said that the rifle was the one that belonged to the captain of the "Arago," Captain Mackintosh.

Q. Did he say anything about a shotgun?

A. Yes, sir; he said that another party of the crew had come ashore with them and that he had a shotgun that the skipper loaned him. He afterwards told me that evening that this other party had not come ashore with him.

Q. Did he mention the name of this person that he said accompanied him ashore?

A. Yes, sir; I believe he did.

Q. What name did he give?

A. "Charley," I think; it is very hard to get the exact words; he said first that Charley did come ashore; he afterwards told me that Charley did not come ashore with him.

Q. What, if anything, did he say in reference to having found a dead man in a cabin?

A. He said he had not found one; that there was no dead man there.
Q. Did he say anything about any revolvers that he had?
A. I believe that he did tell me about having a couple of six-
288 shooters.
Q. Did he make any statement to you as to where he had gotten them?
A. That he made the statement at the time I would not say.
Q. Well, at any time?
A. Yes; he stated that he had three six-shooters aboard the schooner; that he had brought two of them ashore with him and left the other one aboard.
Q. Did you ever see him have a revolver aboard the "Arago?"
A. I did not.
Q. Is it possible for him to have revolvers aboard the "Arago" without you knowing it?
(Objection by Mr. Sullivan as immaterial. No ruling.)
A. Yes, sir.
Q. Is it against the rules and regulations of fishing schooners to have firearms along?
Mr. SULLIVAN. We object to that as immaterial and irrelevant.
The COURT. Objection sustained.
Q. Did you ever see him have a watch while he was aboard the "Arago?"
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Objection denied.
Mr. SULLIVAN. Exception.
A. No, sir.
Q. What further conversation, if any, did you have with him that night?
A. I do not recollect just at present.
Q. Did you agree to accompany him that night?
289 A. Yes, sir.
Q. Did he ask you to accompany him?
Mr. SULLIVAN. We object to that as immaterial and irrelevant and leading.
The COURT. Objection overruled.
Mr. SULLIVAN. Exception.
The COURT. Exception allowed.
A. Yes, sir; Hardy asked me to accompany him.
Q. What did you say?
A. I am not—— Well, I agreed to do it.
Q. Did he tell you what kind of provisions were in this tent?
Mr. SULLIVAN. We object to that as leading.
The COURT. Objection will be sustained.
Q. State whether or not he made any such statement to you. What did he say?
A. He said there were blankets, tobacco, shoes, and I believe a shotgun and several other articles in the line of clothing and provisions; also some reloading tools and ammunition.
Q. Did you make any inquiry of Hardy as to where he had gotten these things?

A. I did.

Q. What did you say?

A. I asked him next morning where he had found them—how he had gotten them. I asked him also if he had killed anybody in order to get these goods. He made the remark, "No; what the hell do you take me for?" or "What the hell do you think I am?"

Q. What conversation, if any, did you have with Hardy that morning?

290 A. I had a conversation with him in regard to the possibility of coupling up with Mr. Scott and party on the same proposition they had made to me, and about a number of other things, to be a member of their party; we to put up our labor and whatever we should possibly be able to find in the way of minerals, one-fourth to be given to the party in general, the other three-fourths to be for ourselves.

Q. What, if anything, did he say in regard to the goods and provisions for the trip that you were going to take?

A. He said, We will go down and get them; and I believe he also said at the time, to endeavor to get into civilization.

Q. Just go on and state what you did.

A. I requested——

(Objection by Sullivan. No ruling.)

Q. State what you did in the presence of Hardy, and what you said.

A. In the morning, when I went into the tent Fred Hardy occupied during that night—a little "V" shaped tent set aside from the rest, possibly from the sleeping tent about ten or twelve feet—Fred Hardy was lying down on the blankets at the time. He showed me a couple of six-shooters and some money, and made some remarks about it at the time.

Q. What were the remarks?

A. I can not just exactly relate—that he had money enough to help both of us out. I do not remember whether he made any particular statements as to where he obtained these six-shooters in any different manner than he formerly stated to me or not at that time. He showed them to me. I called Mr. Smedley to get up and get breakfast.

291 I had a conversation with Mr. Hardy in a little "V" shaped tent. The exact words I can not give. The general gist of the conversation was that I would accompany him, Fred Hardy, to a point where he said he had found some goods, take the majority of the goods, or what was necessary, and accompany him with them to the mainland or to some place in civilization where he could start a saloon. I also agreed to endeavor to get another set of oars and rowlocks from Mr. Scott, to enable us to pull double oars instead of single; that we were to take the dory which I had used for fishing from the schooner "Arago," and which I had in my possession all the time, and go down to a point where Fred said he had found these goods. I called the cook to get breakfast.

Q. When did you and Hardy leave there?

A. About nine o'clock in the morning on the 20th (twentieth). I got several members of the party to help carry the dory from Otter Cove over to False Pass, a distance of about a quarter of a mile. Hardy and I both bid good-bye to members of the party. I had a conversation with Mr. Scott at the time.

Q. Was Hardy present?

A. I am not positive. We collected what materials or parts of the gear of the dories and took them over to False Pass. We got into the dory, and Fred Hardy had given me a forty-four Colt's six-shooter just a little while before we left the Scott's camp in the morning.

Q. Examine plaintiff's Exhibit C, and state whether or not that is the revolver he gave you at that time.

A. To the best of my belief it is.

292 Q. What did you carry it in?

A. It was in a holster. There was a number "5" on the holster. I saw that afterwards.

Q. Examine plaintiff's Exhibit E and state whether or not that is the holster.

A. Yes, I believe it is, sir. Fred Hardy had a Marlin special smokeless-powder rifle in his possession; he had—when I first saw the rifle he had it on his shoulder on the evening of the 19th.

Q. I will ask you to examine this rifle, plaintiff's Exhibit EE, and state whether or not that is the same rifle he had at that time.

A. On the upper part of the rifle, near the sight, were the words cut in the steel barrel, "Marlin special smokeless." I do not know whether the word "rifle" was attached to it or not.

Q. I will ask you to examine that rifle and state whether it is the one he had with him at that time or not.

A. I believe it to be the same rifle.

Q. What was the condition of the rifle when you saw it?

A. It was in very good condition on the evening of the 19th.

Q. You say you first saw that rifle with Hardy on the evening of the 19th?

A. Yes, sir.

Q. Did he make any statement as to where he got it?

A. I believe he told me on the evening of the 19th that it was the one he had gotton from Captain Mackintosh.

Q. Did you ever see a rifle of that kind on the "Arago?"

Mr. SULLIVAN. We object to that as immaterial and irrelevant.

293 The COURT. Objection will be overruled.

A. Not to the best of my knowledge.

Q. Go on and state what you did when you left Scott's camp.

A. On the evening of the 19th I saw Hardy display a watch; I asked him when and where he had obtained it. He said he had it all the time.

Q. What kind of a watch was it?

A. I did not particularly notice at the time.

Q. Did you see it afterwards?

A. Yes, sir.

Q. What kind of a watch was it?

A. There were three watches he had displayed to me in the dory, about two or three hundred yards from the starting point.

Q. What time did you leave Scott's camp?

A. About nine o'clock in the morning.

Q. How did you go?

A. In a dory.

Q. Just state what occurred.

A. We went over a point close to Scott's camp, on Unimak Island in False Pass, towards the village of Marzovio. We landed once and ate a lunch Fred Hardy had bought from Mr. Scott.

Q. Before you got there what did Hardy do, if anything?

A. He displayed three watches and also some money, which he counted.

Q. What was the amount of the money?

A. The amount of money was six hundred and ninety-four dollars.

Q. What kind of money was it?

294 A. Part was in United States gold and silver certificates and some of the money was in silver. The denominations of the bills were—some were twenty-dollar gold certificates; some were ten-dollar and some were five-dollar certificates.

Q. What kind of a watch did he display to you?

A. To all appearances it was a gold one.

Q. Was there anything in particular about these watches to enable you to identify them?

A. He showed them to me, but I did not observe any markings upon any of them, except one which he gave to me.

Q. What kind was that watch?

A. It was a small Waltham watch with no crystal on it.

Q. Examine Plaintiff's Exhibits I and J and state whether or not these are two of the watches which Hardy had in his possession.

A. Both of these, to all appearances, are the ones which he had in his possession at the time. This is the one that he gave to me.

Q. Did he give it to you to wear?

A. Yes, sir.

Q. Did it have that chain attached to it?

A. Let me see it. I believe that Hardy attached that chain to it in my presence at the time he gave it to me.

Q. Was there another watch?

A. Yes, sir.

Q. What kind of a watch was it?

A. I believe a little heavier than either of these, and to all appearances a gold one.

Q. Did you see it afterwards?

A. Yes, sir.

Q. Was there any inscription on it?

295 A. Yes; there were two names on the watch, but I do not know which way they read. They read "Florence to Julia" or "Julia to Florence;" both apparently female names.

Q. What, if anything, was said in regard to where he got these watches?

A. I asked him, and he told me not to be too particular about asking questions.

Q. After that?

A. We stopped at a point about halfway from where we started to Marzovio and ate a lunch, and then proceeded on to the village of Marzovio in order to get some provisions. Hardy gave me a dollar in small change, nickels and dimes, and asked me to go up to the store and try to get some provisions. I found that there was nobody at the store, and I believe the only man that we met at the village at the time was a native boy.

Q. What did you do there? Did you get some provisions?

A. Yes, sir. The money that Hardy gave me was not enough, so I returned it to him. We got some beans, some bacon, and flour from Mrs. Rosenberg; we also got some fish. Hardy gave her two dollars. We put it in the boat and left Marzovio and pulled across the bay in the direction of Unimak Island. There was a heavy wind blowing at the time, and the tide was against us.

Q. Show the jury where you went.

A. Our starting point was here (Otto Cove).

Q. Was Hardy present?

A. Yes, sir; he was in my presence from the morning of the
296 20th almost continuously. We stopped in a point about here at a little spring and had lunch; then we pulled up here into the village of Marzovio or right close to it. We landed our dory at some little houses near the beach and very close to a little creek that flows past the village. We got the provisions from Mrs. Rosenberg. We then pulled across in this direction on account of the wind and tide; we landed at a point about here; there are some large bo'lders here; we left the dory there and went to a little cabin; there is a little wooden shed about four feet by six feet and possibly about four feet high; we stayed there that night; we then went back to the dory and endeavored to get the dory to sail out of the pass and sail into Behring Sea; we could not get out on account of the wind; we left the dory again and walked from the point where we had left the dory over to a point where there is a barabara to a point near the coast; we stayed at that cabin that night; that would be the night of the 21st; next morning we went back again overland to where the dory was; I do not remember exactly what time we got back there; we got a sail on the dory and sailed part of the way; we heaved the dory too and got the sail down; the tide drifted us in and we landed the dory at a point in here, near False Pass; we went to this barabara that we had stopped at the previous night; we stayed there, I believe, that night; I am not positive whether we stayed there the following night or not; we moved and shifted quarters to another barabara that is about half a mile from that towards Behring Sea; we stayed there
297 possibly, if I remember rightly, about two nights; then we went down to the dory and pulled it across the sand spit and had to leave it there; we could not get it on to the Behring Sea side on account of rough weather. I think it was on the morning of the 26th or 27th, I am not positive, of June that we got under way in the dory to the westward to a place where Hardy told me he had placed some goods he got out of the tent, behind some rocks which he designated as "my camp." Before we left this point we saw a schooner coming toward land from the northward; she was very close to the land; I should judge about twenty-five or thirty tons; I do not believe I mentioned that to Hardy. We went from this point to this one, a distance of about eight or ten miles; we left quite early in the morning and passed in between some native Bydarkies and a native camp; the natives were coming about northeast, inside of the point, about here; we didn't stop there; we passed right on down, and Hard informed me before that that there were several cabins at which he had stopped and some of which contained some provisions; he said one contained some flour, another a barrel of

codfish. We went to a point where Hardy told me there was a cabin, and that it contained some flour and bacon; we stopped there; we landed the dory on the west side of a stream that ran there; previously we landed on the northeast side of this stream, and Hardy went ashore to find the exact location of this cabin; I picked him up again and we pulled around the creek and landed close to the creek, and proceeded up to a little cabin, from the Bearing Sea shore about four or five hundred yards, maybe a little more, not any less. We went into this cabin;
298 there was no grub in there; there was a little stove and a couple of bunks. While we were in the cabin—I was sitting on the bunk at the time—I noticed fresh penciling on a beam; we ran across this board in the cabin; whether it was a two by four or a smaller plank I could not positively say. I first noticed that the penciling was comparatively fresh; I called Hardy's attention to it and I examined the writing; it was very easily discerned; I noticed particularly one phrase in it, "We was prospectors." I did not fully make out all of the wording.

Q. Do you know to whom the cabin belonged?

A. I should say from what I learned that it belonged to Charley Rosenberg.

Q. Where was that cabin on the map, as near as you can point it out?

A. It was about fifteen or eighteen miles from False Pass, possibly a little more.

Q. How far from Otter Point?

A. Otter Point is possibly about ten or twelve miles from False Pass. I called Hardy's attention to the writing on the wall.

Q. How far is the creek from the point?

A. Less than five miles. I could not say exactly.

Q. I will ask you to examine that board and writing thereon, and state whether or not that was the board on which you saw this writing.

A. I believe it is; I would have to get it in the same light that I had it there. I believe it to be the same writing and the same board, although I could not positively say so.

Q. You state that you pointed out the writing that was on the
299 board to Hardy?

A. Yes, sir.

Q. Did you read it at the time?

A. I endeavored to read it.

Q. What did Hardy say?

A. He said that the writing was there when he had gone up before.

Q. Did he say anything about it?

A. I do not think so at the time; I am not exactly positive. We stayed at this cabin a short while, not over an hour, and then proceeded over to the westward, where he told me that there was some more cabins, and that when he had gone up previously he had found a sack of flour on some stakes up there outside. Part of a sack. We stopped at the place indicated by him and went ashore. The description of the place is a small creek and a lake; the outlet of the lake, and right at the head of the creek, the water falls over a stone; the depth of it was about six or eight inches. We stopped there and Hardy said he had seen a tea pot on a stump. He also asked me to go across the creek and see if there was

anything I could use there for a cooking utensil on the other side. There are two cabins there. The one to the eastward had turf around it. Part of it had caved in—smashed in. We cooked some flour that we found in the cabin on the west side and ate that.

Q. Can you show on the map where that was?

A. I am not exactly positive. The stream is a little bit to the westward of a point. I should stay that it would be; there is a long
300 reef around out close to the point, and we stayed there a little while and then went on to the westward. Hardy was acting as pilot in regard to the stopping places.

Q. Where was the dory at that time?

A. We were in the dory going to the westward. Before we had gone very far around this point here, Hardy pointed out to me another point which he said behind some rocks close to the sea he had cached these goods we were going after. We landed in here some place where there were some lakes and we landed to the eastward of what I found to be a salt-water lake. We attempted to ford the lake; we forded the lake and went down to the westward of the island. We beached the dory.

Q. Where did you beach it?

A. About in here somewhere; possibly not quite so far to the westward. The salt-water lake is right about in here. We beached the dory to the eastward of that and then walked over to the cabin Hardy had previously described.

Q. To what cabin?

A. It belongs to Charley Rosenberg.

Q. How long did you stay there?

A. We stayed there that night and the next morning some time we started afoot over to where Hardy said he had the stuff cached.

Q. What date was that—what day of the month?

A. I am not exactly positive; about the 27th or 28th, the nearest I can recollect; I am not positive.

Q. Go on and state what occurred that day.

A. At about noon we went towards the cache and before we had
301 reached the bottom, on the foot of the bay, I saw a small schooner making her way to the eastward. I called Hardy's attention to it and we stopped in a place close to the sea; in a place about here, for awhile, and the schooner came in towards the island. Well, she anchored in about here and about the time that she anchored Hardy asked me to go right out in the open with him. I went, and we went in here and stood on the beach for awhile; then we went up onto the hills. This land here is very high. There is a large mound there; we stayed up on this place about here, until after the vessel had sent a boat ashore.

Q. Why did you go up there?

A. I did not know at the time, but it was on a request of Hardy's that I went there.

Q. What did he say?

A. I can not give the exact words, but it was as invitation to go up behind this point. While we were up there the boat came ashore. We stayed there quite a little while. When the schooner sent a boat ashore he gave me fifteen dollars to go and get some provisions and ammunition and find out who the people were and what they wanted. I went down

and had a conversation and then went back to where he was. He told me before I went not to come back the same way I went down. I did as he asked me. I came down here and saw this party and they told me they were members of the schooner "Bayrd;" then I went along this point here at Hardy's request and up onto the edge of the hill. I saw Hardy coming down the side of the mountain and had a conversation with him. He asked me who these parties were and what they wanted.

Q. What did you tell him?

302 A. I do not know if I told him at the time who the parties were. He wanted to know if I thought they were officers or who they were. I laughed at him, and chipped him about it.

Q. What did he say?

A. He said at the time that these people must be looking for the goods; I am not positive about that. He also stated that he had gone up after a bear; he had seen a bear and a couple of cubs and he had fired at them, but they were too far off; that he wanted to catch the cubs. We went on to the westward, then, and came to a trail; we followed the trail across a ravine up onto another hill; there was a little knoll there, which Fred said was his fort; he had stood guard there.

Q. Can you indicate where that knoll is on the map?

A. It would be about along here; the ravine that I spoke of is about here. We went right close on to the edge of the land, and Hardy told me he would show me a place from where we were looking down; he said that was his camp; he also asked me if I thought I could get down there; he also said that unless a person knew how to get down he would have a job finding out; he piloted me down all right; he had to go a little to the westward and down a rather steep bluff; there were a lot of rocks—a gravel beach; the land is formed into two little bights there. Fred told me also that he was unable to get into the place where he had these goods placed, unless at low tide, without climbing over the rocks.

Q. Where was this place?

A. It is about three or four miles from this point, to the westward. This would be about the place.

Q. After you saw these people that came off the schooner and

303 went back to Hardy, where did you and Hardy go?

A. To this point where Hardy said his goods were. About three or four miles distant from where these people were.

Q. When did you arrive at the cache?

A. In the evening.

Q. About what time?

A. It was rather late.

Q. How close was this rock that Hardy pointed out as his fort to the cache?

A. It was not a rock; it was just a small knoll.

Q. How close was that to the cache?

A. If I remember rightly, almost directly over it—the formation where the cache is.

Q. Was this cache down on the beach?

A. Yes, sir.

Q. How close to the sea was it?

A. At high tide the water comes almost up to a sort of cave made there; I presume by the action of the sea.

Q. What did you find when you got there?

A. I saw some stuff scattered on the beach a little ways from where we went down—a dory mast, quite a large heavy one, some canned goods, a square tin, which was open and partly filled with matches in bunches; there was some rope around a rock.

Q. What was the rope around the rock for?

A. I do not know.

Q. Did you find any clothing there?

A. I believe there was some clothing there under a rock; yes, there was some clothing and some other stuff there.

304 Q. Where was this clothing?

A. It was in between two rocks.

Q. How was it packed?

A. Some of it was tied in bundles—small bundles, some of it—and some of it was loose.

Q. Did you make an examination of any of the clothes there?

A. Yes; I believe I did.

Q. What did you see? What kind of clothes did you find?

A. In between these two rocks there was some socks and some underclothing, I believe; some trousers; there was a few tins of canned goods a little further from them. I think there was some cod line, and I believe there was some hooks attached to the cod line; some boards, or pieces of wood painted red—apparently pieces of a dory.

Q. Did you see an overcoat there?

A. The overcoat, the goods, clothing, and stuff that I have just finished describing were to the westward of this little point where this little cave is, just east of where we came down, about, possibly, fifty or one hundred yards, probably not so much. We went around the point and into the cabin or cave-like place.

Q. Who led the way?

A. Hardy. There was in there a fixture formed of canvas and pieces of round wood. They were stayed with pieces of cod line of heavier quality than we used for fishing in the dories, and I believe there were four or six round uprights and around them, in the shape of a wall, was a piece of canvas. The thing was about four or five feet in

305 height—about four feet in height, I should say. It was covered over the top with a piece of canvas and a rubber blanket. There was some cooking utensils hanging up on a nail on one of these boards; there was also there a square tin, like a coal-oil can, and there was some boxes, and I believe there was some cups and knives and forks in it. There was some provisions in this place, but inside this shack there was some boards laid down on crosspieces under them. One end of the crosspieces rested on the ground or stones. There were some little pieces of boards laid down on top of these crosspieces and on top of them there was some bedding.

Q. What kind of bedding?

A. Blankets and a comforter.

Q. Did you see any boxes or clothes that he had?

A. There were some boxes there.

Q. Did you examine them?

A. Not at that time.

Q. Did you subsequently?
A. Yes, sir.
Q. How many bags of clothes were there there?
A. There were three bags, the same as seamen use.
The COURT. We will take a recess for five minutes.
(Usual admonition given to jurors.)

After recess, all present, proceedings resumed pursuant to adjournment.

Q. I believe you stated in your testimony that there was some bed-clothing?
306 A. Yes, sir.
Q. Examine that comforter and state whether or not you have seen it before.
A. Yes, sir; apparently the same comforter. There were no particular marks on it that I could identify it by.
Q. Was it the same color?
A. Yes, sir; to the best of my recollection.
Q. What kind of blankets were there?
A. I believe there was one double white blanket. There was a double red blanket there, very heavy; the same grade of blanket, but whether there was one or two I do not remember. The white blanket had been worn some. The red blanket was almost new; one of the gray blankets was—well it had been worn some; not to any great extent.
Q. Was there a robe there of any kind?
A. Hardy said there was an Otter skin robe there, but I never saw it.
Q. Examine that blanket and state whether or not it was one of the blankets that you saw there.
A. Yes, sir; to the best of my knowledge it was. It was a gray blanket. There are no marks that I could identify it by.
Q. Did the white blankets have any stripes across them, or marks on them?
A. Yes, sir; I believe there were some narrow blue striped and also some red striped blankets.
Q. Were there any stripes on each division of the blanket?
A. Yes, sir.
Q. Did you see any overcoats there?
A. Yes, sir; there were two.
307 Q. What kind were they?
A. One was a black one; I should describe it as Irish frieze or chinchilla; the other was, if I recollect right, a brown one.
Q. Were there any marks of any kind on either of these overcoats that you saw?
A. On the black overcoat I believe there was the maker's name and "Butte, Montana," on a little bit of black silk. I believe the monogram letters were in black silk, or I mean white silk, or they might possibly be stamped with this silver ink.
Q. Examine that coat and state whether or not that is the coat that you have just described and the coat that you saw there at that time.
A. I believe it to be the same coat.
Q. Is that the coat you refer to when you speak of it being an Irish frieze or chinchilla?

A. Yes, sir; either this one or one exactly like it.
Q. Has that coat got the maker's name on it?
A. Yes, sir; this one has.
Q. What does it say?
A. "M. J. Connell Co., Butte, Montana."
Q. Did the other coat that you saw there have a maker's mark on it?
A. I do not distinctly remember whether it did or not. I can not say as to that.
Q. I will ask you to examine that coat and state whether or not it is the coat you referred to a short time ago as being of a reddish color. Is that the coat you saw in the cache?
308 A. I am not positive about this being the exact coat, but it was a coat that would answer the same description that this one would.
Q. Examine that red blanket and state whether or not that is the same one you saw.
A. I believe it is; yes, sir.
Q. Was there any other clothing there that you can remember distinctly?
A. Yes, sir; there was a suit of gray—I do not distinctly remember—a coat, vest, and pants. It was what is known to me as English serge.
Q. Was it heavy cloth or light?
A. One such as one would use for summer wear.
Q. Were there any shirts there?
A. There were some undershirts; one or two checked shirts—the main color would be a sort of gray—the color of the stripes I do not remember. There were also a pair of silk stockings there, short to the knee, the same as would be used for a swelling in the knee; one of them was dirty, the other apparently had not been used.
Q. Are these the same that you saw there at that time?
A. To the best of my belief they are; there were no particular marks, but one of them was dirty.
Q. Do you remember whether or not you saw that shirt there?
A. I could not say positively that I saw that shirt, but it was marked in the same way. There were some laundry marks on some of the underclothing; I think it was "147," I believe.
Q. Do you know upon what kind of clothing those marks were?
309 A. I believe it was on underclothing.
Q. Do you know whether any of the socks bore any of those marks?
A. I could not positively state.
Q. State whether or not you saw any of those socks there.
A. There were several different pairs of socks and several different pairs of mittens; some were light and some were dark.
Q. What kind of mittens were they?
A. They were woolen mittens—dark. I believe that there were a pair of mittens there that had a selvage edge around the wrist.
Q. Did you see any hats?
A. Yes, sir; I saw some hats, but could not positively identify them.
Q. What was the color?

A. I do not know whether they were all black hats or any particular color.

Q. Do you know the style of the hat?

A. Well, I should say about halfway between a Fedora and a slouch—I do not know the name that is given the hat.

Q. Examine that hat and state whether or not that is the same style of hat you saw there.

A. Yes, sir; I believe it is. I did not particularly examine the hats.

Q. Did you see any slickers over there?

A. Yes; I believe there were three or four slickers.

Q. What kind?

A. Black and heavy quality of slicker, a little heavier than are
310 usually used for oil skin; there were some stamped marks on them.

Q. Where were the stamp marks?

A. They were on the outside side of the coat.

Q. Did you know what stamp they were?

A. I do not remember exactly, but I believe the stamp was in the shape of a diamond.

Q. Was there more than one diamond?

A. I do not remember.

Q. Examine that slicker and state whether or not that is one of the slickers that you saw there at that time, or not.

A. I believe this to be one of them, although the stamp does not correspond to the shape of the stamp that I had in my mind. It does not correspond.

Q. Are they the same color?

A. Yes, sir; they are black.

Q. Same cloth?

A. Yes, sir; about the same, what we call filling cloth.

Q. What kind of mittens did you see?

A. There were several kinds; one or two pairs of dark mittens and one pair with a selvedge edge—that is, the finish of the mittens around the wrists.

Q. Were they of the same color?

A. The mittens with this selvedge on them were of a checkered color; I am not positive.

Q. Examine that mitten and state whether it is one that you saw.

A. These answer the description, but not having any particular marks on them, I would not say positively; they correspond with the ones I saw there.

Q. Examine these trousers and state whether or not you saw
311 them there.

A. Yes, sir; there were a pair of trousers there that answered that description.

Q. Was there any cord or any twine of any kind?

A. There was some heavy cod line there; it was heavier than what we used for fishing.

Q. What color?

A. White.

Q. Is that the one?

A. No, sir; it is not.

Q. Did you see any ball of twine there?
A. Yes, sir; there was a ball of twine there.
Q. Were there any tape lines, do you remember?
A. No, sir; there were several small articles there that I would not be able to identify positively. There was a compass there, such as would be used on a small schooner; it had a globe on it and a card in it; it was globe-shaped, or ball shaped rather, and had a swinging dial.
Q. What was the size of that compass?
A. It was a small one; I think about three, three and a half, or not more than four inches in diameter.
Q. Was it in a box?
A. No, sir.
Q. Did you see a hat like this there?
A. I would not be positive about that.
Q. Examine that underwear.
A. There was underwear there that would answer that description; also a shirt that would answer to that. There was a new jumper there also.
312 Q. Same color?
A. Yes, sir; blue denim.
Q. Same style?
A. Yes, sir.
Q. Examine that mit and state whether you saw it there.
A. I should say yes.
Q. Were there any shoes there?
A. Yes, sir; there were three pair of men's shoes—heavy working shoes. I do not know what the name of them would be. They came up that high on a man's leg. I believe that one pair of them were black. The other two, to the best of my recollection, were tan color. I am not positive.
Q. Examine that blanket and state whether or not that is the white blanket you had reference to when you testified about it a short time ago.
A. I believe that to be the same blanket I saw in the cache on the Behring Sea side of Unimak Island on or about the 29th day of June, 1901.
Q. Examine those underclothes.
A. I can not positively identify those underclothes. I could not identify any particular garment of underclothing.
Q. Examine those shoes and state whether or not you saw them there at the cache on or about the 27th day of June, 1901.
A. There were one or two pair of light shoes there at the time. I would not be positive as to whether there were one or two pair there. The style would be about the same as those, though I can not remember any particular marks or numbers that I saw on them.
313 Q. State whether or not, in your opinion, these are the same shoes you saw at that time.
A. To the best of my belief they are.
Q. Did you see a rule—a carpenter's rule—there?
A. I would not be positive about that.
Q. Did you see any stones of any kind?

A. Yes; there were two stones, such as are used for setting up razors or fine cutlery. One was larger than the other. I believe the small one is what is called a smoothing stone to smooth the surface of the larger one.

Q. Is that the one you saw there?

A. To the best of my knowledge it is. I do not remember any particular mark on the stone or the color.

Q. Examine this underwear and state whether or not it corresponds in quality and color with the underwear that you saw in that cache.

A. Yes, sir; it does.

Mr. McGINN. I will now produce these three bags of different articles—plaintiff's Exhibits GG, HH, and II—and will ask you to examine the contents thereof.

Q. I will now show you plaintiff's Exhibit FF, and ask you to state whether or not you have ever seen that bag before.

A. Yes, sir.

Q. When did you see it?

A. I first saw the canvas in Fred Hardy's hands at the fishing station of Greenbaum & Company at Dora Harbor, on the Pacific side of Unimak Island, about between sixteen and twenty miles south of the village
314 of Marzovio. I saw the bag completed hanging in Fred Hardy's bunk. The bunk was on the left-hand side of the building, facing the door. As you enter the door it was in the rear.

Q. Did you know the contents of the bag at that time?

A. There were some razors; the kind I can not say. They were always in the bag; but they were among the articles.

Q. What kind of razors were they?

A. Some were white handled and some were black handled.

Q. How many white handled razors were there?

A. I believe there were two. One of the razors had some scroll work on the handle. I believe it was ivory or bone handle.

Q. Do you know whether or not any of the razors you saw in Hardy's possession had a name on the handle?

A. I do not particularly remember. I believe that one of them had a monogram in gold on it. I never used the razor.

Q. Do you remember what that name was?

A. No, sir: I do not. There were a couple of pair of hair clippers, but I did not particularly examine them. There were several pocketknives, some lead pencils, a small pocket dictionary. I do not remember whether these articles were always in this bag, but I saw them in Hardy's possession at one time or another from about the 29th—I would not be positive—about the 29th of June until nearly the 17th or 18th of July; possibly a little later or possibly a little earlier.

Q. Did you see him with any beads of any kind?

A. There were several strings of Catholic rosary beads, but I would not be positive about them. I believe I saw them among several other articles that were in this cache.

315 Q. Do you know the color of these beads?

A. I would not be able to positively state. There was a small memorandum book that I saw in Fred Hardy's possession. I would not be able to identify it positively, I do not think; and there was some

brushes—shaving brushes—and a lot of small articles of jewelry. I would not say positively what they were all—cuff buttons, etc.

Q. Examine those beads and state whether or not in your opinion those are the same rosary beads that you saw in the possession of Hardy.

A. I would not be able to positively identify these articles. I believe that one of these beads was ivory. I am not positive about that.

Q. Examine those beads and state whether or not you saw them in the possession of Hardy.

A. I could not positively state that.

Q. Did you see rosary beads in his possession corresponding to those?

A. Yes, I should say, to the best of my recollection, I did. Of that I am not positive.

Q. Have you ever seen any shaving brushes in his possession?

A. Yes, sir; he had two or three shaving brushes.

Q. What kind were they?

A. I believe that some of them were dark-colored hair. I would not positively be able to identify them.

Q. Do you know the color of the handles?

A. Dark, I believe. I am not positive.

Q. Examine that brush and state whether or not you are able to
316 identify that as the shaving brush that you saw in his possession, or one that corresponds to the one that you saw in the possession of Hardy.

A. That would be very hard to identify; I could not positively.

Q. You say you saw some pencils in the bag?

A. Yes, sir.

Q. Examine these pencils and state whether or not they are the ones you saw.

A. I would say yes. There was a small compass with a small mark on the corner of it. I think it was the price mark, "$1.25," I think.

Q. Examine that compass and state whether it is the one you refer to.

A. The mark corresponds to the one I saw.

Q. Where is that mark?

A. On the corner of the compass; on the outside cover.

Q. How many hair clippers did you see in the possession of Hardy?

A. Two sets.

Q. Does one of these correspond to that one?

A. One set did. One set was slightly smaller than the other. They were not both the same size.

Q. Examine those razors and state whether or not, in your opinion, these razors correspond in appearance with the razors that you saw in the possession of Hardy.

A. Yes, sir; to all appearances they do. I believe this one I could positively identify as one which I saw in Hardy's possession on the Behring Sea side of Unimak Island, at the point indicated as the cache, on or about the 29th of June. I am not positive about the date.
317 It may possibly be a day one way or the other. I kept no distinct memorandum or diary.

Q. Examine that book and state whether or not you ever saw it in the possession of Hardy or in this bag.

A. I saw a book in the possession of Fred Hardy that corresponded with this one to all appearances. It was a pocket dictionary, although I could not positively identify it.

Q. Examine that stone and state whether or not it is the stone that you referred to, or a stone similar to that, when you spoke of seeing two stones.

A. To all appearances it is. It would answer the description.

Q. Examine these knives and state whether or not they correspond in appearance with the knives you saw in the possession of Hardy.

A. There were half a dozen or so pocketknives, but I could not say that I identify any of them.

Q. Did you see any pincers of any kind in any of these goods or in Hardy's possession?

A. That I could not say; I do not distinctly remember.

Q. Did you see any rubber boots in the cache?

A. There were several pair of rubber boots there. I did not particularly examine those.

Q. Examine that slicker and state whether or not you saw that slicker at the cache when you and Hardy went there.

A. I have a trade-mark in my mind, that it was a diamond—I am not positive about that—in the mark. I know there were three or four slickers there. I could not state positively.

Q. Examine that shirt and state whether you can identify it.

A. I could not say. I would not be positive about articles that
318 are not particularly marked—some particular mark on them that I could remember.

Q. You spoke a short time ago about seeing some shoes; what kind did you see?

A. Miners' shoes; something that would answer the description of those.

Q. How were they soled? Do you remember?

A. With what they call hob nails or Russian nails; some of the nails were out of the bottom.

Q. Examine those shoes and state whether or not they are the shoes that you saw there.

A. They would answer the description. They were not all black shoes.

Q. Did you see any fur cap of any kind in the cache?

A. I do not distinctly remember that, but there were a pair of—I do not know exactly what you call them, such as are used for over the foot when snowshoes or skis are worn; they have lacings on them something like an Indian moccasin. There were a pair of them.

Q. Examine those clothes and state whether or not they correspond in appearance with the clothes that you saw at the cache.

A. In a general way, yes.

Q. Examine these clippers and state whether or not they correspond with the clippers you saw with Hardy on the 27th or 29th day of June of this year.

A. Between the 27th and 29th days, I would not be positive one way or the other, of June, in the year 1901, and the middle of July of the same year; yes, sir.

Q. You say that you saw several pairs of rubber boots?

A. Yes, sir.

319 Q. Where did you see them?

A. They were on top of some articles that were in bags on the outside of the arrangement that was fixed up in this cache.

Q. Was there anything particular about any of these boots that enabled you to identify them?

A. I did not examine the boots, although Hardy told me previously that one of the boots had a hole, apparently a shot hole, in it, in the leg; they were a long rubber boot.

Q. Hardy told you that?

A. Yes, sir.

Q. You never saw the boots before?

A. I saw a pair of boots that Mr. Jackson had on board the "Manning" about a week ago that had a hole in the top part of the leg.

Q. But you did not see the boot in the cache?

A. I did not examine. Hardy told me there was a boot there that answered that description, although I did not examine the boots there at the time.

Court to jury: Gentlemen of the jury, you will remember the admonition heretofore given you by the court, to go with the bailiff, not to talk with anyone nor permit anyone to talk to you about this case, or anything else; you will not discuss it among yourselves, nor will you endeavor to reach an opinion until the case is finally submitted to you.

And thereupon, at this time the court was ordered to stand adjourned until seven o'clock this evening, the third day of September, 1901.

320 UNALASKA, ALASKA, SEVEN O'CLOCK P. M.,
Tuesday, September the third, 1901.

All present; proceedings resumed pursuant to adjournment.

GEORGE ASTON resumed testimony.

Q. Mr. Aston, when you went to this cache with Hardy, did you see a shotgun there?

A. I saw a shotgun case, that contained, to all appearances, a shotgun. I afterwards saw the shotgun outside of the case.

Q. What kind of a shotgun was it?

A. A double barrelled breech-loading shotgun; about a ten; I am not positive, and it was either a Sneider or a Smith make from the markings of the shotgun.

Q. Did you examine those marks?

A. I did; saw the marks on both guns.

Q. Examine this plaintiff's Exhibit DD and state whether or not that is the gun that you found at the cache at that time.

A. Yes; but it is not in as good condition as it was then.

Q. Is that the same shotgun?

A. Yes, sir; I should say it was.

Q. In your testimony this afternoon you spoke about a compass and described it; I will ask you to examine that compass and state whether or not it is the one you spoke about.

A. That is the compass that I saw at the cache.

Mr. McGINN. I will now offer this compass in evidence, if the court please.

The COURT. Admitted. It shall be marked "Plaintiff's Exhibit KK."

Q. You arrived at this cache on what night?

321 A. About the 27th or 29th; I would not be positive. I am not distinctly positive about that.

Q. Either the 27th or the 28th?

Mr. SULLIVAN. We object to the question as leading.

(No ruling.)

Q. The 27th or 29th?

A. I am not exactly positive.

Q. What did you do there that night?

A. We got some supper out of the provisions that were in the place, and we slept there that night.

Q. Did Hardy, that night, make any statement to you in regard to the provisions, clothing, and stuff that was there?

A. I believe he did, but I do not distinctly remember what it was. He did not do it voluntarily.

Q. Did you ask him any questions?

A. I did.

Q. What questions did you ask him, as near as you can remember?

A. All the questions that I asked him were pertaining to how he came in possession of those goods.

Q. What did he say?

A. He told me that he had found the goods that I saw in the cache some three or four miles to the westward of where the cache was, and that he had found the articles in a tent. If I remember rightly, he stated to me that the tent was pitched below the high-water line. I do not distinctly remember, but I believe that as far as my memory serves me, he also stated that he had placed some of the goods that were in this tent in a dory and that he had pulled the dory up as far as he

322 could to the eastward and that he had anchored the dory. Had lost the anchor and the dory came in contact with the rocks and got stove in. Whether it was the side or not I could not be positive. He landed these goods that he had in the dory at this point designated as a cache that he had found immediately after landing there. He had smashed the dory up with an axe.

Q. Did he state for what purpose, at that time?

A. No; I do not remember him stating for what purpose, at that time.

Q. Did you see any parts of a dory in the cache?

A. I saw several pieces of wood painted red; also a part that would belong to a dory, the forward part, called the nose, in the shape of a knee, a painted piece of wood with a rope attached, a piece of rope that we generally speak of as a "painter."

Q. Did he, in that conversation, state whether there were any persons with him when he first saw the tent?

Mr. SULLIVAN. We object to that question as leading.

The COURT. Objection sustained.

Q. What did he say in reference to seeing this tent there?

Mr. SULLIVAN. We object to that question.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

A. I can not distinctly say that on the first night, when we were in the cache, what statement he did make in particular pertaining to when he had seen this tent on the beach for the first time. During conversations that I had with him, and upon the evening of the 19th of June until about the 7th or 8th of July, he made several different statements to me.

323 Q. Did you see a tent in the cache?

A. No, sir.

Q. Did you see any canvas there?

A. Yes, sir; there was a part of a bolt of new canvas, apparently.

Q. Did you see a part of a canvas tent there?

Mr. SULLIVAN. We object to the question as leading.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

A. Well, I could not exactly say that I saw part of a canvas tent there. There were pieces of canvas there, but whether they were part or had been part of a tent or not, I could not exactly say.

Q. Did Hardy make any statement in regard to them?

A. I do not exactly remember whether he did or not. On the first night that we were in the cache, but during the period that I stated, between the 19th of June and the 7th or 8th of July, Hardy made certain statements about a tent.

Q. What did he say?

A. He said that he had come ashore with the watering party from the schooner, and that he had seen a tent pitched on the beach; that he and the chief and the third or second mate, I am not positive which, went to this tent; that there was some whiskey in the tent in demijohns; there was also some fresh bread in the tent; and that the mates drank the whiskey; he drank of it. At some other date he told me that from appearances of the tent, and its immediate surroundings, he thought that someone else had been there before him. He also stated that the

324 watering party from the schooner I speak of as the "Arago," the one on which he was employed, he and I were both employed, they had seen some men, to the best of my recollection, the number he said was three, running away from the tent. And that he also had heard, or thought they heard a shot or shots; but whether he stated that he heard these shots before he saw the men running or afterwards, I can not distinctly state. He also told me that he and the third mate, Clark, had gone upon the hill to chase a fox; I do not know whether they stated they returned or not, but he stated that he had lost his glove or gloves; that he had gone back up on the hill to look for his glove or gloves, and that he had stayed away from the watering party, and that he had also seen one of the members of the crew, known as "Laurie" Benton, pull the dory which Hardy had used, for fishing purposes, for bringing water aboard the ship. The dories of this fishing schooner are numbered. He stated that Laurie Benton pulled the dory out to the ship, and Fred stated that he saw Laury pulling his dory. He also told me, some time during our conversation, that he had had a little bit of a row with the skipper.

Q. Who do you mean by the "skipper?"

A. The captain. That when the dories were going ashore for water, that he and his dory had set a sail; that the captain had made a remark about his liability to capsize on account of whiskey barrels of water that he would be obliged to place in the dory; that he had told the skipper that he, Fred Hardy, was sailing the dory. He also stated that
325 he was afraid to return to the schooner on account of what he had said to the captain.

Q. Mr. Aston, during the conversation that you had with Hardy, when he told you that he and the mate both came to this tent and that the mates drank whiskey, and that he went back into the mountains to look for his glove, did he then tell you what he did after that on his return?

A. I can not exactly connect those particular statements into one. He told me also that he had cut the tent down and slashed it; he also told me that he had buried some of the provisions, goods that were in the tent, at or near where the tent had stood.

Q. Did you say anything to him, to Hardy, at the time that he had cut the tent down?

A. Yes, sir; I did.

Q. What did you say?

A. I asked Hardy why he destroyed the property which he had told me he had.

Q. What did Hardy say, if anything?

A. He made the statement to me in connection with those things, "George, I had to do it; I was starving."

Q. When did he make that remark to you?

A. That I do not distinctly remember; but that was in connection with these different stories he had told me, and in connection with his having destroyed the certain property which he said he had.

Q. My question was, Mr. Aston, if, at the time that Hardy told you he had cut up this tent, you asked him anything, and you stated
326 that you did. Then I asked you what, if anything, Hardy said in response to your question.

A. I can not recollect whether he did or did not say anything in response to it, but—yes, I do recollect it now—he said he had put them out of commission if they ever returned.

Q. Did Hardy tell you he came back to the tent after leaving there with the mate?

Mr. SULLIVAN. We object to that as leading, and cross-examination of their own witness.

The COURT. Objection will be sustained.

Q. Did he ever say anything about having returned to that tent after the mates left there?

A. I believe he did.

Q. State what he said.

A. I can not exactly get at that. He said that he had found a six-shooter outside of the tent, in a holster, where it had apparently been dropped.

Q. What further, if anything, did he say at that time?

A. He told me that in the tent were some valises, and that he had—I believe he said he had cut and destroyed those valises. I asked him if there were any paper or papers by which he could tell to whom those

goods originally belonged. He specially mentioned two letters which he said were written in German; he said he had destroyed them.

Q. Destroyed the letters or the valises?

A. He had stated previously that he had destroyed the valises. He also told me that he had destroyed some letters and some papers; I do not remember whether he stated what these letters and papers were or not.

327 Q. What, if anything, did Hardy ever state to you in regard to having stayed in that tent?

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

A. He stated they had stayed three or four days at the tent; that nobody returned there.

Q. What else did he say on this day?

A. He also stated that he had removed goods in the dory some three or four miles to the eastward, and anchored the dory; lost the anchor; the dory got stove in on some rocks or rock; he had smashed the dory up.

Q. Did he, at any time, state to you how long he remained there at the cache after taking these goods down?

A. Yes, sir; he said that he remained there three or four days; that he had laid up behind a little knoll that was almost directly above the cache; that he had kept guard.

Q. Did he tell you where he next went?

A. He said he proceeded in the direction of False Pass; that he had surrounded several lakes on his way, and that he had—on his way he had met some natives, but he had kept at a distance from them; that he also surrounded their camp; that he had walked out onto a sandspit and endeavored to ford False Pass; that he had to return; he told me that on his way up he had found a sack or part of a sack of flour on a stake outside of a cabin; that he had also seen a cabin that contained a barrel or half barrel of codfish, salted; he also stated that he had taken

328 some bread with him, and that he had eaten the bread. He told me that he had stayed over some night or nights in a cabin or cabins on the way; I believe he told me how long he estimated it took him to go down to where Scott's party were camped, from the time he had left.

Q. How many days did you say he estimated?

A. Well, he told me once that he had walked the distance in a couple of days, and another time he told me that it had taken him three or four days.

Q. Do you know where Cape Lapin is?

A. I was at a point which I have been given to understand is Cape Lapin, in company with several officers, the surgeon, and some members of the crew of the "Manning."

Q. Do you know where it is?

A. Yes, sir.

Q. Do you know where the creek runs into the cove?

A. Yes, sir.

Q. In what direction from this creek was the cache that you have spoken about?

A. To the eastward.
Q. About how many miles?
A. Three or four; not less; only an estimate.
Q. Designate on this map where the cache was.
A. It was here.
Q. Designate the creek.
A. There are two small islands in the bay at this point.
Q. I believe you testified that Hardy told you that he had put these goods in a dory and carried them eastward three or four miles?
A. He did, sir.
329 Q. From the place where he had found them?
Mr. SULLIVAN. We object to that question as leading.
The COURT. Objection sustained.
Q. Did Hardy ever tell you why he moved these goods to or rather from Cape Lapin to where he cached them?
A. No; I do not believe he did; at least I have no distinct recollection of his having done so.
Q. You stated in your testimony that you stayed at this cache there the night of the 27th or the 29th?
Mr. SULLIVAN. Objection.
(No ruling.)
Q. Did you sleep there that night?
A. On two nights; the nights of the 29th. I am not exactly positive, but about that date; we stayed two nights in the cache.
Q. What did you do on the day following the first night that you stayed in the cache?
A. We went—I left Hardy in the cache after we had had a conversation and went to the eastward towards a dory which we had come from at Scott's camp; I had left it at a place about four or five miles east of the cache, on the beach. Hardy said that he would go over to where he had got these goods from. I left the cache before he did. I met some members of the schooner "Bayrd;" some of the parties that I had seen the day before.
Q. When did you next see Hardy?
A. Along towards evening; I was returning in the direction of the cache and met Hardy coming towards me.
Q. Did you get your dory?
330 A. No, sir.
Q. Then go on and state what occurred when you met Hardy.
A. Hardy had a rifle and told me that he had about sixty rounds of ammunition; I do not distinctly remember whether we divided the ammunition; that part of the ammunition was rifle ammunition and part six-shooter ammunition.
Q. What else was said?
A. I asked him what he was loading himself down for like a walking arsenal. He told me that he would not only have some goods but he would also have a schooner.
Q. What further did he say at that time?
A. I believe it was while he had been over to where he said he was going—to where he said in the morning he was going, that he had noticed that some parties had been there ashore and that they had bur-

ied the cook. He also said that attached to a piece of board was a piece of paper with some writing; that the rain had partly obliterated the writing, which was in ink; that he could make out from what was left of the writing that the name on it was—I am not distinctly certain—but it was "Sullivan" or "Sutherland;" and that contained in this writing that he saw was a statement that he had been in the States long enough to be entitled to the rights of American citizenship. There was another remark he made about it—he also stated that there was quite a large graveyard started over there, and that he had seen some of the party that went from the schooner "Bayrd"—"Thomas F. Bayrd;" that he had seen them near this creek and that he had kept some distance
331 from them. He believed they had not seen him.

Q. Did he state anything further at that time?

A. Not to the best of my recollection.

Q. When he stated to you that he had some goods and was going to have a schooner, what, if anything, did you say to him?

A. I believe I asked him the reasons for saying that.

Q. What did he say?

A. I do not distinctly remember; he may have made some remark, but just at the present time it has slipped my memory; I can not recollect it now.

Q. He did say something, did he?

A. Yes, sir.

Q. Did you see the schooner "Bayrd" after you had that conversation with him?

A. Before I had met Hardy on my return from where I had gone towards the dory, I noticed that the schooner got under way pretty quickly.

Q. Can not you recollect what Hardy said in reply to your questions about the schooner?

Mr. SULLIVAN. We object to that as immaterial and leading.

The COURT. Objection overruled.

A. I remember, during the course of conversation about members of this schooner's party, he asked me if I thought they were police officers or not.

Q. That was the first conversation you had with him?

Mr. SULLIVAN. We object to that.

332 The COURT. You may let him state what conversation it was.

A. I can not recollect just at the present moment.

Q. Where did you and Hardy then go?

A. We went to the shack.

Q. What part of the day was it that you arrived at the cache?

A. In the evening.

Q. Did you remain there that night?

A. We did.

Q. What did you do the next day?

A. Tore down the arrangement that had been placed up there and placed the different goods that were there in bags. The bags were already there; and those that contained the goods that I had seen in the cache. While we were placing those things in the different bags I examined the articles. I can not say that I gave them a very close

examination, but we placed the bags, after having put the goods in different bags, in different places close to the cache, within a radius of about fifty feet from where this structure of canvas and wood was when I first saw it.

Q. Did you pile them all in a heap?

A. No, sir. The three bags were placed in different localities. The bag containing the blankets was placed in up underneath the cave or ridge.

Q. Why was that done?

Mr. SULLIVAN. We object to that question.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

333 A. Well, I can not distinctly say why it was done in that manner; but I told Hardy some time during the morning that he had better let these things alone.

Q. Did you state any reasons to him at that time why he should let these things alone?

A. I said they are liable to get us into trouble.

Q. What did he say to that?

A. I do not distinctly remember what he said, but I told him not to take anything except what he actually needed; what was actually necessary—some food; and he said he would not carry any food.

Q. You had no time to get any of these things in your dory, did you?

Mr. SULLIVAN. We object to that as leading.

(No ruling.)

A. The dory which I had was never so far westward as the cache.

Q. What, if any, effort did you make to get the dory to the cache?

Mr. SULLIVAN. Objection as immaterial.

The COURT. Objection overruled.

A. I went up to the dory one day and could not get it off the beach.

Q. Did you go up there after that?

A. Yes, sir; both Hardy and I went another day.

Q. Could you get it off the beach?

A. No, sir.

Q. After disposing of that stuff at the cache what did you do?

A. We left the cache.

Q. What did you carry with you, if anything?

334 A. We carried part of a blanket.

Q. Which blanket?

A. Half of a double blanket; it was a gray one; some flour, some bacon, and a shotgun.

Q. Is this the shotgun that you carried? (Showing plaintiff's Exhibit DD.)

A. Yes, sir. Hardy took also a piece of tarpaulin or piece of square canvas that was sewn up on the edge; possibly three or four square yards, some shot gun shells. Hardy carried a rifle and a blanket roll. He had placed some articles that were among the goods in the cache in his blanket roll.

Q. What did that consist of?

A. Some hair clippers, a small compass, a folding map, a can partly full of baking powder and several other small articles.

Q. Where did you go?

A. We went to the eastward, towards the cabin in which we had stayed in the first night. It belongs to Charley Rosenberg and is about five, or between five and seven miles to the eastward of the cache.

Q. What did you do?

A. While I was there I shot a ptarmigan.

Q. Did you stay at the cabin?

A. When we approached the cabin Hardy was in the lead and it was quite dark. He came back towards me and made the remark, "There is somebody in the cabin." I asked him how he knew. He said
335 there was a pair of boots hanging up outside. I also asked him what was the odds. He said "I believe that Charley Rosenberg is after these goods." It was a remark to that effect—I can not exactly remember it now. Well, he would not go into the cabin. He asked me to go first.

Q. What did you do?

A. I handed him the shot gun and I went up to the door and knocked. A party inside answered me and wanted to know who it was. I told him it was George; I also asked him if that was Charley. First I asked him if it was—well, the name I am kind of mixed up in—the name of the native I met and took me to his camp when I came 'shore at False Pass on the 3rd of June. Natives were hunting up and down there, moving their camps to the westward. I saw by the boots that were hanging outside that they were native boots, so I thought it was a native. I went inside the cabin and had a conversation with Rosenberg. He asked me was anybody with me; I told him yes. I went to the door and called to Hardy; he would not come in. I went out to him and he asked me who was in the cabin; I told him Charley Rosenberg. He said he did not want Charley to know him; he also asked me to call him "Joe Cox."

Q. Did he state any reason?

A. That he did not want Charley Rosenberg to know him, and that he thought Charley Rosenberg knew something about those goods.

Q. What did you do then?

A. He had put his blanket roll, and both the shot gun and rifle behind where there had been an old barabara, under some grass.

Q. Was the grass deep in that vicinity?

336 A. No; not at that time. He had pulled some of the dry grass and laid it over them.

Q. How far was the barabara from the cabin that Rosenberg was living in?

A. It was close to it; it is the ruins of a barabara. It is about not more than one hundred feet I should say.

Q. Is it in front of the cabin, side of the cabin, back of the cabin, or where?

A. It lies diagonally from the door of the cabin; looking from the westward, it is on the right hand side.

Q. About what way does that cabin face?

A. It is about west, southwest I should say.

Q. Did you say anything to him about leaving the blanket and rifle there?

Mr. SULLIVAN. We object to that as immaterial and irrelevant.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

A. I told him to bring it inside. He would not do it. I had previously taken my pack into the cabin and thrown it on the floor.

Q. What did you do?

A. I called Hardy then and went back to the cabin, after speaking to him and after he had requested me to call him "Joe Cox," and he followed me. We went inside and Rosenberg asked him what his name was. He told him it was Joe Cox.

Q. Did you call him after you got back to the cabin?

A. Yes, sir; I called him two or three times. I one time called
337 him Fred and he made a kick about it. I also called him Joe; he made a kick about me not continuously calling him it.

Q. When you were on the inside and he was on the outside, did you call him?

A. Yes, sir.

Q. What did you call him then?

A. I called him "Fred" once and "Joe," as he had requested me to.

Q. How long had you been in that cabin before Hardy entered it?

A. Not over three or four minutes.

Q. Go on and state what occurred when you got inside the cabin.

A. Rosenberg asked Hardy or both of us—his question was addressed to both of us—if we had a rifle? Hardy said, "No, nothing but a six-shooter." Rosenberg also stated that the natives said they had seen a man with a rifle, and that they (the natives) would know this man if they saw him again. In the course of the conversation in the evening I told Rosenberg about having seen the writing in the cabin.

Q. What writing had you reference to?

A. The writing I had seen in the cabin coming down, to the effect that certain parties had been killed by natives. Rosenberg also stated that there had been two men—that some man had destroyed a cabin of his—and Hardy stated that he would not do any such thing as that. Rosenberg and I had a conversation about this writing on the wall of the cabin, and he——

Q. Was Hardy present?

A. Hardy was. Charley stated he did not think the natives would
338 do anything like that; that they would kill nobody, unless the people would interfere with their women, or unless the Indians were in a drunken row. During the course of the evening I also asked Charley what the chances were to have him take us to Belkofsky.

Q. Where is Belkofsky?

A. I do not exactly know, but from directions received and from looking at the maps I should say it is about forty miles from the mouth of False Pass, on the Pacific side of the mainland.

Q. What was the conversation you had with Rosenberg about taking you to that place?

A. That I would let him have the dory. Hardy also agreed to give him some money; Hardy did not state any particular amount. The remark was made during the course of the conversation, by Hardy, that Rosenberg might just as well have some money as anybody else; that we were willing to pay for taking us off the island. During the course of

the conversation I told Charley—I made a remark of a bicycle I had in Honolulu. I laughed and joked about it; said it would be a fine thing to have a bicycle down there in that country.

Q. Did you sleep there that night?

A. Yes; Rosenberg had apparently been lying down when I went to the cabin, and he gave us two of the deerskins to lie on that he had in his bunk under him. It was after I had got something to eat. He also gave us a little deer meat. We made some flapjacks and some tea or coffee. I don't remember which. I do not think Charley ate anything; Hardy and I did.

Q. Did the lamp burn in the cabin all night?

A. Yes; we were talking until nearly daylight, and the lamp
339 was lighted; it was not extinguished until very nearly daylight. Rosenberg was first asleep, and turned in after we went into the cabin. He first had his feet towards the door; we were lying in the same direction; that is our feet and heads, or our heads were to the eastward. Charley changed ends in the bunk.

Q. What time did you get up in the morning?

A. I do not exactly know what time it was.

Q. Was it daybreak?

A. It was daybreak.

Q. Who left the cabin first?

A. Hardy went outside first and came back in again, but while he was out Charley asked me what kind of a fellow that fellow was——

Mr. SULLIVAN. We object to his stating what anybody asked him.

(No ruling.)

Hardy came back into the cabin. He was only gone from the cabin about five minutes at the outside. We got some breakfast. There was a discussion about paying Charley for taking us off the island. Hardy again went outside and sat on a box that was outside. It was about—well, not much further than twenty-five feet. I do not distinctly remember. I can not say the exact distance. I went out to ask him if he gave Charley some money. I told him I would give him the dory. He asked me how much I thought we ought to give him. I told him I thought about ten dollars. He said it was too much. We had a
340 conversation there, for possibly ten minutes altogether at the outside, about giving Charley this ten dollars. He asked me to ask Charley how much he would take us off of the island and down to some point where we could reach a mail steamer. Charley wanted us to—well, I do not really know that Charley really wanted us to go, but in the course of the conversation it was suggested that Hardy and I would go with Rosenberg in my dory, so that we could get Rosenberg's schooner. But Hardy did not seem to care about going. In fact, he refused to go, and wanted me to go up and get the dory and bring it back down. I do not know as he gave any particular reasons at the time for not wishing to go with me. He made some remark about guns, to the effect that he did not think that it would be desirable to let Rosenberg know that they were in our possession at the time, after he had told Rosenberg that he had nothing but a six-shooter. Rosenberg and I left the cabin and went towards the dory. I was going to bring the dory back down.

Q. How long were you gone after the dory?
A. Quite awhile. The dory was about——
Q. Just answer my question.
A. Possibly two or three hours.
Q. Then did you return to the cabin?
A. I did.
Q. Who did you find at the cabin when you got there?
A. Hardy was at the cabin, and when I went in—he had previously been lying down in the bunk—he jumped up with his six-shooter in his hand and made the remark, "Oh! that is you George, is it?"

341 Q. Which six-shooter did he have?
A. The 41 Colt.

Q. I want you to show the manner in which Hardy used the revolver at that time.
Mr. SULLIVAN. We object to that as immaterial and irrelevant.
The COURT. Objection overruled.
Mr. SULLIVAN. Exception.
A. He had apparently been lying in the bunk and jumped up with the six-shooter in his hand. I do not know whether he cocked it or not, but he jumped up and pulled it something like this, kind of a half-sitting or half-lying posture.
Q. Did he point it at you?
A. I can not say that he exactly pointed it at me, but the muzzle was pointed in my direction; pointed at the door.
Q. What did you say?
A. I asked him what he was trying to do, or why he wanted to act like that. I could not say exactly what I did ask him, but it was to that effect. I asked the reason why he did it. He said something in return to it, but I am not positive as to just what it was. We had a conversation and he had tied the rifle and the shotgun and I believe the blankets in a package. I had been away from the cabin. He tied the things up in a bunch, the rifle and shotgun, and I made some remark about having tied them up in a bundle like that. He said he did not want to take the things with him.
Q. Did he assign any reason?

342 A. I do not know that he assigned any particular reason at the time, but he did give me to understand that after having told Rosenberg that he did not have a rifle and shotgun that he did not want to show them.

Q. What did you do then?
A. Hardy took the rifle and shotgun apart; undid the bundle. Sometime previous to this he had scraped the stock of the rifle.
Q. When?
A. It was one night; just whether it was the day we had returned to Charley Rosenberg's cabin from the cache or afterwards I am kind of muddled; but he undid the bundle anyway and took the guns apart. He tied them up loosely again and put them outside of the cabin close to kind of a bank; a little hollow to the right of the cabin, between the sea and the cabin, a little to the northward of the cabin, and partly covered the package up with dirt.
Q. Are those the parts of the shotgun as you then separated them?
A. I did not separate them.

Q. Well, then, as Hardy separated them? (Showing plaintiff's Exhibit DD.)

A. Yes, sir.

Q. Are those the parts of the rifle as Hardy took them apart? (Showing plaintiff's Exhibit EE.)

A. Yes, sir.

Q. Who wrapped them up?

A. Hardy wrapped them up twice. The first time when I had
343 gone up with Rosenberg. The second time after he had taken them apart and placed them outside in this bank. I went out and took them in again, and told him that it was not right to destroy it. I also told him that it would be advisable to leave those things where they would not be altogether destroyed, so that they could be recovered; that we ought to inform Rosenberg about having seen the goods. Previous to this time—I am not distinctly positive, but it was one night when we stayed in Rosenberg's cabin—Hardy took particular pains to look after them. The night following the one on which we had seen the "Bayrd's" party we stayed up nearly all night fixing the six-shooter—the .44; I had carried it from Scott's camp down to there, and in fording the creek I got the thing all sand and rust, and it was in—the cylinder would not revolve.

Q. Did you wrap up these guns that night?

A. Not at the time. After I had taken the guns from the place where Hardy had previously covered them with dirt, I wrapped them up in a more secure manner than they were and placed them under the eaves of the cabin.

Q. In what did you wrap them?

A. In a piece of canvas.

Q. Did you have any cartridges there at that time?

A. Hardy had some thirty—thirty cartridges that he had taken from the cache, and some forty-one shells—loaded cartridges—pistol ammunition. We also had some Winchester Blue Rival shot-gun shells.

Q. In what did you place the rifle cartridges?

A. In a glass bottle.

344 Q. Examine this bottle, Plaintiff's Exhibit N, and state whether it is the bottle that you put them in that night.

A. I believe it is, sir.

Q. Examine this piece of canvas and state whether or not you have seen it before.

A. To all appearances, yes; it seems to be the piece of canvas that the guns were wrapped in.

Q. Is that the piece of canvas that you wrapped these guns in?

A. Yes, sir; I rewrapped them.

Q. Did you place this bottle of cartridges in this canvas?

A. I did not. Hardy 'ad thrown them outside; I picked them up and put them in the bottle.

(Canvas offered in evidence, Plaintiff's Exhibit .)

Q. Did you place anything else there?

A. Yes, sir; a vest that Hardy had worn, and one that he had on him when I first saw him in Scott's camp. It was a gray vest.

Q. What kind of a vest was it?

A. It was light-colored—nearly gray.

Q. I will ask you to examine that vest, Exhibit CC, and state whether or not that is the vest that Hardy had on that night, or left there.

A. That is the vest that Hardy left at the cabin and one that he had worn some time previously.

Q. Did he wear it the day he came to the cabin?

A. He had that vest on on the morning that I had seen him in Scott's camp; that was the first time I had seen the vest.

Q. Where did he leave the vest?

A. I think he threw it outside; I remember picking the vest up after he had thrown it outside.

345 Q. Where was Charley Rosenberg at the time that you were wrapping and repacking these guns?

A. He had gone on to where the dory was to all appearances.

Q. He left with you when you went after the dory?

A. Yes, sir.

Q. Did he not return?

A. I do not know whether he did or not, but I went outside of the cabin shortly after I returned and I saw somebody watching; but I could not tell who it was.

Q. Did he return to the cabin while you were there?

A. No, sir.

Q. While you and Hardy were there did he return?

A. No, sir; at least not to my knowledge.

Q. When did you next see this canvas containing the rifle and the shotgun after the time that you placed them under the eaves of this cabin?

A. On the evening of Sunday a week ago. A week ago last Sunday evening.

Q. Who was with you at that time?

A. U. S. Deputy Marshal Richards, Mr. Owen Jackson, and District Attorney McGinn, and myself.

Q. In what place were these guns found with reference to the place where you left them?

A. Exactly in the same place.

Q. What was done with this package containing the rifle and the gun after they were found there?

A. They were taken out of the place where they had been cached

346 and brought into the cabin in the presence of Mr. McGinn, U. S. Deputy Marshal Richards, and Owen Jackson and myself; the bottle containing the cartridges was also brought in.

Q. What was done with them? Where were they carried?

A. The next day they were taken aboard the United States revenue cutter "Manning."

Q. I believe you stated, Mr. Aston, that you had some shells for the shotgun?

A. Yes, sir.

Q. What color were they?

A. Winchester Blue Rival shells.

Q. Did you leave any in the cabin that night?

A. I had carried them from this cache over to Rosenberg's cabin and left them there.

Q. Where did you leave them?

A. On a bench that is along the wall on the left-hand side of the cabin going in.

Q. Examine those shells marked "Plaintiff's Exhibit N," and state whether or not they were the shells that you left there in the cabin at that time, if you are able.

A. Yes; to all appearances they are. They are of the same description.

Q. Did you see any shells in that cabin at the time that you were last there; that is, a week ago last Sunday?

A. (ASTON.) Did I see any shells?

A. (McGINN.) Yes.

A. Yes, sir; they were in the cabin at the time.

Q. Did they correspond in appearance with these shells here?

347 A. They did.

Q. What was done with these shells?

A. They were taken aboard the U. S. cutter "Manning."

Q. How long did you remain at the cabin with Rosenberg after wrapping these guns?

A. I think we stayed there the next night, or that night; I think we did; I am pretty sure. When we had come to this cabin we had been to the cache and saw Rosenberg there, and he told us it was the evening of the third of July.

Q. When did you leave there, with reference to the third day of July?

A. It would be the fourth day of July; first day.

Q. What did you do that day?

A. We—Fred Hardy and myself—walked to where the dory was—had been left, to the eastward of the cabin, towards False Pass—and we pulled the dory up alongside of the sand hills and turned it upside down and left it.

Q. Then what did you do?

A. We went on to the eastward, along the beach. Before we had left the dory I noticed what to all appearances was the fresh trail of a human being, and made by a person who had worn his native boots or shoes. The trail led both ways; it had gone down to where the dory was and returned. We went along the beach, and after we had proceeded some distance I noticed what I took to be a human being on top of a small knoll. I remarked the fact to Hardy, and he left the beach and went up onto the sand knolls; the land along there is sandy; the beach is all fine sand and a little distance from the edge of the water.

348 The distance varies in places about twenty-five or thirty yards.

Q. What about those tracks?

A. Hardy went up onto the knoll—that is, onto the high land; I went along a little ways further and made a remark about seeing this individual and called Hardy's attention to it. He apparently did not want to be seen, but whether he made any particular remark about it or not will not distinctly say now; but I asked him to come down and we would go and see who it was or what it was. He would not do it; he did not want to, but I finally persuaded him to. When we arrived at the point at which I had seen this individual there was no one in sight; the party had disappeared. Hardy struck inland; I went close to the beach. I could not see anybody, although the trail was apparently fresh,

and after we had proceeded some distance, I was talking to Hardy about this individual and made a remark about who he may be or who he might be looking for. Hardy went back to where we stopped, about five minutes' walk from where this point was; the point I mean is about five miles to the eastward of the large extremity and about eight miles to the eastward of the cache; I do not positively know; it is about that distance.

Q. What did you do?

A. I started down; Hardy went back towards the place where I had described seeing this person, and Hardy told me that he saw a native; that he apparently was watching somebody; that this native had a rifle on his shoulder. I told him I thought it was some of the natives seal hunting.

349 Q. What did he say? What did you do?

A. We proceeded on towards False Pass and stopped at a native camp. Rosenberg had informed us, the night that we met him in his cabin, that the natives had moved their camp further to the westward than they were when Hardy and I came to the westward in the dory. We stopped with the natives and had some tea and lunch with them; we got some meat from them and went on again. We stopped that night in the cabin in which I had seen the writing when we were going down. The cabin was about half way between the cache, the place where these goods were cached, and False Pass. We stayed in the cabin over night, and the next day a native came up to the cabin.

Q. Is that Rosenberg's cabin?

A. Well, to my own positive knowledge I do not know, but to the best of my belief it is claimed by him. It is one I refer to as Rosenberg's; there are several along there. The native had breakfast with us, and that was very nearly the finish of the provisions we had taken from the cache. We left there the next day. We stayed there over night and went on next morning and arrived at a cabin at the head of the cove, about eight or ten miles from Marzovio.

Q. What cove?

A. It is a bay; part of False Pass. It is about three or four miles from False Pass. We stayed there over night; at any rate we did not have anything to eat next morning. We went to a cabin or part of a cabin in False Pass, almost directly west of the village of Mar-

350 zovio, a distance of about four miles. We stayed there some time, and I attempted to flag. There was a black steamer in the bay at Marzovio, but it was pretty far away. There was also a small schooner in there, but they did not answer my signal.

Q. What day was it that you arrived at that cabin; do you remember that?

A. Before we arrived at this cabin we had stayed with some eight or ten natives.

Q. Do you know the date?

A. I am not positive about the date; It was about the sixth of July.

Q. I ask you, Mr. Aston, if during all that time that you have testified about, if Hardy had with him any gold watches?

A. He had with him two gold watches that I had seen him display in the dory shortly after we left Scott's camp. He had previously given me one of three.

Q. Did you during all this time have the other one?

A. I had the one Hardy gave me when we were leaving Scott's camp. The other two I never had possession of.

Q. Did you see these three watches in this cabin that you occupied about June 6th, about three or four miles from Marzovio?

A. No, sir; I did not see them on June 6th.

Q. July 6th?

A. I did see them; Hardy had two of them—one he had shown me, and opened the case previously. I noticed that the case was marked "Julia to Florence" or "Florence to Julia." He had also another gold watch; it was a watch that had some kind of diamond-shaped arrangement around it.

351 Q. Do you know whether or not it is the watch I showed you to-day?

A. This is the watch he gave me. This watch Fred Hardy had; he also had another one; I believe it was heavier.

Q. Did he have any other jewelry with him at that time?

A. Yes, sir; he had several articles; I can not distinctly say what they were.

Q. What, if anything, did Hardy say in reference to these watches that he had?

A. Well, he wanted to—he made the remark about dumping everything he had, while I was attempting to flag this steamer, and apparently did not want to be seen with them.

Q. Did he have a scarf pin with him at that time?

A. I do not know whether he did or not, but he took one from the cache; I did not see the scarf pin; I never had it in my hands; I can not say I saw it with him.

Q. What did you say when he proposed to dump the stuff?

A. I told him he had better keep the things.

Q. How long did you remain at that cabin?

A. Until towards evening.

Q. Then where did you go?

A. We saw a schooner coming out of Marzovio and coming down the pass; we went up the pass and endeavored to flag the schooner, but they did not answer us. We followed them for about four or five miles, maybe more than that, and the schooner anchored on the mainland side of the pass; two people got out of her in a small boat. We went right down the pass on the island side, and we stopped that night at some old
352 cabins that were right over on a hill, a little above where Scott's camp was at Otter Cove; we stopped in a cabin that night.

Q. Where did you go next day?

A. Next day we went to a fishing station that belonged to the Alaska Cod Fishing Company.

Q. What did you do when you got there?

A. We got some breakfast; we had not had anything to eat.

Q. Then what did you do?

A. We had a conversation with Mr. Gaffney.

Q. About what?

A. Part of the conversation relative to the actions of Mr. Scott; Mr. Gaffney reported to us a story that Mr. Scott had reported to him, and which he said he did not believe.

Q. What did you and Hardy do?

A. Hardy went outside with Mr. Gaffney, while I stayed in the cook house; we finally got Mr. Gaffney to allow to us a couple of dories to work in; that is, he made a proposition to us. Hardy first wanted to find out if there was any possibility of being able to pay for passage off the island from the fishing station; also requested some parties that were there with a boat to take us off—Hardy and myself off the island; they would not do it; they refused; they said that they wanted forty dollars to take us off; Hardy said he thought that was too much; he also endeavored to buy a dory.

Q. Did he succeed?

A. No, sir.

Q. Then what did you do?

A. Mr. Gaffney made Hardy the proposition that provided Hardy
353 would put up an amount to cover the cost of dories and fishing gear, that he would allow us to go to work fishing. Well, there was a kick made among the fishermen; one of them wanted to quit; it seems there was a good deal of kicking. Hardy then placed sixty-five dollars in Mr. Gaffney's possession, for which Mr. Gaffney gave him a receipt; the receipt was—Gaffney asked to whom the receipt would be made out; he said it ought to be made out to him; Gaffney made a kick and said that there was a possibility that if he gave me a dory I might smash it; the best thing to do would be to make the receipt out to both of us.

Q. Was that done?

A. Yes, sir.

Q. Did Hardy put up the money?

A. Yes, sir.

Q. Did you go to work?

A. Yes, sir.

Q. When did you go to work?

A. About a couple of days after we arrived there—I should think about the ninth of July.

Q. How long did you remain there?

A. About two weeks; I am not positive.

Q. When you went to work for Mr. Gaffney at the fishing station was anything said about revolvers?

A. Yes, sir; the guns that Hardy—the parties that were asked to take us off the island, Hardy and myself—and for which they agreed to take passage; we offered to give these parties possession of the firearms
that were in our possession, and they would not accept. They
354 wanted forty dollars and the kick was made that it was too much. They agreed to give Mr. Gaffney the guns, and Hardy said he would; that we had only one six-shooter in our possession. He had previously stated to Mr. Gaffney that when he had arrived at Mr. Scott's camp at Otter Cove that Mr. Scott had wanted to take his six-shooter from him; that he had refused to give it, saying that it was the only thing he had and that he would not give it up. He also told Mr. Gaffney that I was the one that paid Mr. Scott fifty dollars which Scott had collected from Hardy.

Q. Was there a rule at that fishing station that none of the fishermen were to have any firearms?

Mr. SULLIVAN. We object to that as immaterial.

The COURT. Objection sustained.

Q. Did Mr. Gaffney make a demand on you and Hardy to turn over your firearms?

A. It was not exactly a demand; it was a request.

Q. And Hardy handed him the .38 or the .41?

Mr. SULLIVAN. We object to that question.

(No ruling.)

Q. What did he hand him?

A. I did not see what he handed him.

Q. Did Hardy tell you that he had?

A. Yes, sir.

Q. Done what?

A. Given Mr. Gaffney one.

Q. Which one?

A. The .41.

Q. What did he do with the other?

355 A. That was in my possession. I told Hardy that he should give up both guns. He said that he had told Gaffney that he only had one and there was no use in making a liar out of him. Hardy afterwards took the six-shooter himself.

Q. How soon after or about what time was it that he took the six-shooter?

A. I do not exactly remember the date.

Q. Well, about what time?

A. Some few days before we left the fishing station he said he was going over to a creek close to False Pass to get some salmon.

Q. When you and Hardy went to work there, did you sleep in the same room?

A. Yes, sir.

Q. How close was your bunk to his?

A. Directly opposite his.

Q. Did you see very much of him during the time you were working there?

A. I used to see him at nighttime and during the hours that we were employed in the same vicinity; in the tank house and cabin. During the day, when the weather permitted, we were fishing.

Q. During the time you were there did you have any conversation with him in reference to these goods and provisions—how he had got them?

A. No, sir; I did not.

Q. Did you see the watches while you were there?

A. I saw one.

Q. When is the last time you saw the watch that bore the

356 inscription "Florence to Julia" or "Julia to Florence?"

A. In the Barabara on Unimak Island to the westward of Marzovio and distant from Marzovio about four miles.

Q. That is the cabin that you speak of having been there on the night of July 6th?

A. Yes, sir.

Q. How did you happen to leave that fishing station?

A. We were placed under arrest.

Q. By whom?

A. I was afterwards informed, by United States Deputy Marshal Sullivan.

Q. On what date?

A. I could not exactly say; about two weeks after we had arrived there.

Q. Was Hardy arrested at the same time?

A. He was; he was placed under arrest.

Q. Where were you at the time the officers arrived?

A. I was playing cards. Hardy had been playing cards and notice was given that there were three men coming over the hill towards the place and on the table Hardy had placed some money; he had previously given me fifty cents to take a hand in the game. Hardy took this money that he had placed on the table in front of him, and left the table where we were playing, and went out; the next time I saw him was after U. S. Deputy Marshal Sullivan came in and called me out. I saw Fred Hardy then in irons. I also saw some man in uniform whom I afterwards learned was the gunner of the U. S. S. "Manning."

Q. Where did the officer take you?

357 A. To a point between Otter Cove and False Pass, a distance of about five miles from the fishing station.

Q. Then where did he take you?

A. To where the MacArthur outfit was camped.

Q. Was Hardy there?

A. I was placed aboard the "Manning" with Hardy, and I saw him pass me in the alleyway and saw him a few minutes later.

Q. Did you have any conversation with him?

A. I did not.

Q. Then where did they take you?

A. They placed me in a room designated as the office.

Q. Where did the "Manning" take you?

A. They brought us to Unalaska.

Q. Have you been there ever since that time?

A. I have.

Q. Have you been back to Unimak Island?

A. I have been back to Unimak Island on the "Manning."

Q. Have you been to Cape Lapin?

A. I have.

Q. When were you there?

A. On Monday, a week ago past. About ten days ago.

Q. Who was with you at the time?

A. Mr. Edmonds, lieutenant of the "Manning," Mr. Kotzschmar, the engineer, the surgeon of the revenue cutter "Manning," some members of her crew, U. S. Deputy Marshal Richards, and Owen Jackson.

Q. What did you do there?

358 A. I dug around on the beach at a place where Owen Jackson indicated as where a tent had been, belonging to himself and other parties.

(Objection by Sullivan.

No ruling.)

I dug around on the place on the beach where the tent had been placed; I also, in company with Deputy Marshal Richards, went up to a creek, some distance up the creek, and Mr. Richards pointed out some objects that were lying on the bank on the right-hand side of the creek going up and very close to the edge of the creek. We went over there and uncovered, nearly uncovered, some articles which proved to be the remains of some valises. The articles were partly uncovered when I first saw them. There was, also, a small paper there; part of what had been a large piece of paper, on the face of which was printed a certificate of citizenship of Owen Jackson. That was not in the valise.

Q. I will ask you to examine plaintiff's Exhibit P and state whether or not it is one of the valises that you found buried in the ground at Cape Lapin.

A. Yes, sir.

Q. I will ask you to examine this valise marked "Plaintiff's Exhibit Q," and state whether or not, in your opinion, those are the same that you found there.

A. To all appearances, and to the best of my knowledge, yes.

Q. Examine plaintiff's Exhibit O, and state whether or not it is one of the valises that you saw there.

A. To the best of my recollection they are the same.

359 Q. The first time you saw the defendant Hardy in San Francisco how was he dressed?

A. In the uniform of a United States soldier—a United States uniform.

Q. Was it an officer's uniform or a private's uniform?

A. There were no markers that I saw on the uniform. It was very neat looking, but there were no markings of an officer.

Q. Any straps?

A. No more than the little straps that are on the kharki uniform.

Q. Are you familiar with the kharki officer's uniform?

A. No; not particularly.

Q. Do you know whether they are different from a private's uniform?

A. Yes; I know they are different.

Q. Can you say whether or not it was an officer's or a private's uniform?

Mr. SULLIVAN. We object, as he has already answered the question.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

A. To the best of my belief it was not an officer's uniform.

Q. During the last part, or from the time that you left Rosenberg's cabin, and the time that you arrived at this fishing station, did you make any inquiry of Hardy as to where he had gotten these goods?

A. Yes, sir; I asked him several questions.

Q. How did he answer you?

A. He gave me different answers at different times.

Q. You have narrated some of the answers that he gave you?

360 A. Yes, sir.

Mr. MCGINN. That is all.

The COURT. We will adjourn at this time until nine-thirty o'clock to-morrow morning.

The Court to jury: Gentlemen of the jury, you will remember the admonition that the court has so frequently given you, not to discuss this case with anybody, nor to permit anybody to talk to you about the case or anything else. You will be continued in the charge of the bailiff, who will see that you have a proper place to sleep and proper food.

You are not to have communication with anybody and will return to court at nine-thirty o'clock to-morrow morning.

And thereupon, at this time the court was ordered to stand adjourned until the hour of half past nine o'clock, Wednesday morning, September 4th, 1901.

361 UNALASKA, ALASKA, NINE-THIRTY O'CLOCK A. M.,
Wednesday, September 4th, 1901.

All present; proceedings resumed pursuant to adjournment.

Cross-examination:

Q. (By Mr. SULLIVAN.) Mr. Aston, where were you born?
A. In Milwaukee, Wis.
Q. How many years ago?
A. Thirty-six years ago.
Q. Where did you have dinner yesterday?
A. In Unalaska.
Q. At what place?
A. At the marshal's residence.
Q. The deputy marshal's residence?
A. Yes, sir.
Q. Is that where he keeps you?
A. That is where my present place of abode is.
Q. You reside there at present?
A. I do.
Q. How long have you been residing there?
A. I do not know the exact date when I first went there.
Q. Did you take up your residence voluntarily there?
A. No, sir.
Q. When did you commence residing there? Under what circumstances?
A. I was brought down on the United States revenue cutter "Manning" from Unimak Island.
Q. Under arrest at the time?
A. I was placed in irons on the island and was under guard
362 aboard the cutter; I came ashore in irons.
Q. Have you ever been discharged from custody?
A. Not to the best of my knowledge.
Q. You still reside up there?
A. Yes, sir.
Q. You have been treated somewhat as a "trusty," have you not?
A. I have not been closely confined.
Q. Seen people when you desire to? People have seen you?
A. Yes, sir.
Q. You have seen people there?
A. I have.
Q. People have called upon you, have they not?

A. Yes, sir.
Q. You have met Sulivan there—the United States deputy marshal there several times?
A. I have.
Q. Now, Mr. Hardy, where were you educated?
A. My name is not Hardy.
Q. Where were you educated, Mr. Aston.
A. In Milwaukee.
Q. At what school?
A. Marquette College.
Q. Where have you been living since?
A. Different parts of the globe.
Q. What is your occupation?
A. Seafaring man.
Q. How early did you commence seafaring life?
A. When I was about seventeen or eighteen.
363 Q. Had you been going to school up to that time?
A. Not all the time; no.
Q. Do you remember being on the witness stand here last night?
A. I do.
Q. How long had you been in San Francisco before you came to Unimak Island?
A. About a week.
Q. About a week?
A. Yes, sir.
Q. Where had you been before that time?
A. Honolulu, in the Territory of Hawaii.
Q. Have you ever been addicted to the use of opium or morphine?
A. I have not.
Q. You are positive that you have not used morphine of any kind in any way?
A. Yes, sir.
Q. Ever used chloral?
A. Not to the best of my knowledge.
Q. You wish to have the jury understand that you are not in the habit of using any drug of any kind?
A. I use tobacco.
Q. Well, any drug, such as morphine?
A. I have not; only for medical purposes.
Q. How often have you used it?
A. Only when prescribed by the physicians.
Q. Have you used any in Inalaska?
A. I have not.
Q. Are you positive of that?
364 A. Of my own free will I have never used any.
Q. You have had your intelligence since you have been here?
A. I have.
Q. You know whether or not you have used any drug of any kind since you have been here?
A. I believe so.
Q. How is your memory this morning; is it good?

A. It is the same as it usually is.
Q. Is it as good as it was last night?
Mr. McGinn. We object to this kind of questioning.
The Court. Objection overruled.
Q. Your memory is the same all the time? Your appearance on the stand is the same all the time, is it not?
A. I do not know.
Q. Do you remember if your appearance on the stand this morning is the same as it was last night?
A. I have not got a mirror to see myself.
Q. Is that the only recollection you have in regard to it?
A. I do not see any other reason.
Q. You think if you had a mirror you could tell whether your demeanor is the same this morning, do you?
A. I do not know whether I could or not.
Q. I have forgotten how old you said you were.
A. I have not.
Q. Well, I have, and I would like to have you tell me.
A. I am thirty-six years old.
Q. Have you ever been a merchant?
A. In what sense?
365 Q. Dry goods, groceries, or miscellaneous stocks? Do you know what a merchant is?
A. I have an idea. I have been engaged in business that would go under that term.
Q. How many years have you served on the high seas?
A. Off and on, fifteen or sixteen.
Q. Fifteen or sixteen years?
A. Yes, sir.
Q. Now, where did you make an inventory of these different goods which you say that Hardy showed you in the cache and other places?
A. I do not know.
Q. Did you go there with the intention of buying them from Hardy?
A. I did not.
Q. When did you say you left San Francisco upon the "Arago" for Unimak Island?
A. The latter part of March or the first of April.
Q. How many days were you on the trip?
A. To where?
Q. From San Francisco to Unimak Island.
A. We were thirty-six days coming into Behring Sea waters.
Q. How many days coming to Unimak Island?
A. From where?
A. San Francisco.
A. I did not expect to go to Unimak Island from San Francisco.
Q. How many days to where you claim you first landed from the schooner "Arago" to San Francisco?
A. I can not say exactly how many days.
366 Q. You do not remember?
A. I remember the date that I landed on Unimak Island.
Q. Mr. Aston, did you ever file an affidavit in this case?
A. I did.

Q. This week, on Monday?

A. A few days ago.

Q. Did you not state in that affidavit that you left San Francisco on the schooner "Arago" about the middle of April, 1901?

A. I signed my name to an affidavit which that date was written on.

Q. You observed it when you signed the affidavit, did you?

A. Not particularly.

Q. Then how did you know that it was written on it?

A. In a general way I knew it was written on it.

Q. How did you know?

A. It was read to me.

Q. Then you knew it was there when you signed it?

A. Yes, sir.

Q. Now, Mr. Aston, from the time that you were arrested and the defendant was arrested, have you ever seen any of these articles which have been produced here in court and also at the preliminary examination before Judge Whipple?

A. Yes, sir.

Q. Where?

A. I saw a bundle on the island of Unimak. I also saw some remains of what had originally been a valise.

Q. Where did you see them since your arrest?

A. I saw them on the island of Unimak?

367 Q. That has been since your arrest, and about ten or eleven days ago? That is when you went on the "Manning" this last trip?

A. Yes, sir.

Q. Now, all this lot of miscellaneous articles that are in those sacks, you remember them? Did you see those articles since your arrest, except at the preliminary examination and in this court when they were produced here?

A. Not to my knowledge.

Q. You would know if you had or not, would you?

A. Yes, sir.

Q. Then you have not seen them?

A. No, sir; they were also exhibited in this court room.

Q. When?

A. Before one or two of the witnesses in this case.

Q. Where were you at the time?

A. I was in the court room.

Q. Back in the room somewhere?

A. Yes, sir.

Q. That is all the sight or examination you had of them since your arrest, is it?

A. To the best of my knowledge.

Q. You never at any time have gone over a list of these articles or a description of them with any person or persons since your arrest, except at the preliminary examination and upon this trial here?

A. I have seen no list of them.

Q. Have you gone over a list of the articles or what purported to be a list?

368 A. I have talked about several articles that I had seen.

Q. Who did you talk with?

A. Different parties.

Q. Well, who are they?

A. One is District Attorney McGinn, the other Judge Whipple.

Q. Who else?

A. I do not know if I ever spoke to Mr. Sullivan or not.

Q. Do not remember that?

A. Not distinctly; no.

Q. Did you make a memorandum of these different articles at the time that you found them?

A. I did not.

Q. Did you make any memorandum showing the numbers, list, or the names of any of them at that time?

A. I did not.

Q. There are a good many pieces of underclothing in that list, or in the bundle that you saw, is there not?

A. There are several articles of underclothing.

Q. Now, you remember distinctly seeing on one of these pieces of underclothing the number "147," while you were at that cache?

A. To the best of my recollection I do.

Q. You have never seen the number since until you saw it in the court room?

A. I never said that I had not seen it since or that I had seen it in the court room.

Q. Did you not testify that the underclothing was marked "147?"

A. I testified to the best of my belief that the laundry mark on some of the underclothing was "147."

369 Q. Now you say you did see it some other time than here; do you mean the preliminary examination?

A. Did see what?

Q. This underclothing marked "147."

A. I have seen the laundry mark on some of the clothing, to the best of my recollection was "147."

Q. Now, since your arrest and you were brought to Unalaska, did you see that piece of underclothing until you were brought to court to your preliminary examination?

A. I do not remember.

Q. Did you see it in this court room?

A. I do not remember whether it was here or not.

Q. Do you undertake to say that some of the underclothes that were brought to this court room, produced in this court room, had "147" on it?

A. I do not.

Q. What did you say?

A. I said there was some underclothing in the cache that had a number which I believe to be "147."

Q. Were all these articles in the cache—all this clothing?

A. What clothing did you have reference to?

Q. Well, this that is tacked up here in front of you.

A. I saw these articles; that is, in a general way I could identify them as the same articles, and some I could identify particularly.

Q. Were they all in the cache?
A. In the immediate vicinity of it.
Q. How long were you about this cache—the one you and
370 Hardy testified to?
A. About what cache? I do not exactly understand what you mean by the word about.
Q. Do you know what cache I refer to? How long were you and Hardy about or at the cache that you refer to?
A. The word "about," what do you mean?
Q. About the cache or in that vicinity.
A. We slept two nights in the cache.
Q. How long were you there in that vicinity?
A. We were in the vicinity of the cache within—well, three or four miles to the westward of it and the cache itself—several days.
Q. About how many?
A. Possibly five or six.
Q. What days were they? What month and what days of the week?
A. Some of the days were in the month of June and some of them in the month of July.
Q. Do you remember whether it was five or six days or was it a week?
A. I did not pay very much attention.
Q. I ask you whether you remember if it was or not?
A. I can not say positively as to whether it was a week or not; I kept no memorandum, and am not positive as to dates—not to a day or so.
Q. Now, in addition to the underclothing marked "147," you recollect seeing socks there?
A. What socks? Where?
Q. At the cache.
371 A. There were several pairs of socks there.
Q. And mittens with selvedge edge?
A. Yes, sir.
Q. And dark hats?
A. Yes, sir.
Q. The color black?
A. I did not say black.
Q. Did you not say black in your examination?
A. I did not say black; there were no particular marks on them that I noticed.
Q. Did you not say that hat was what seemed to be about half between a slouch and a Fedora hat?
A. I do not think—I said I saw some hats that I believed to be dark ones, the style, to the best of my knowledge, about between a Fedora and a slouch.
Q. You were then shown slickers; two or three; you stated that you recognized them because they had a stamp mark on them.
A. One cannot particularly recognize goods of that kind.
Q. You remembered seeing that white mark on them at that time, did you?
A. I saw slickers in the cache.
Q. You saw trousers there?
A. Yes; there were trousers there.

Q. Did you see the price mark on them?
A. I did not notice it.
Q. You saw a ball of twine there?
A. There was a ball of twine in the cache.
Q. You remember particularly the size of the compass you saw there?
372 A. Did I distinctly state the size of it?
Q. I do not remember. I asked you if you remembered the size of it.
A. I said it was between three and five inches.
Q. Did you not say it was between three and three and a half inches?
A. I testified to the fact that the compass was to be recognized from the description I had given of it.
Q. You saw some more underwear there, and a shirt?
A. I saw several articles of underwear and several shirts.
Q. You were shown a good many times different garments of underwear in your examination, were you not?
A. I was.
Q. You saw a jumper there, too?
A. I saw a jumper; yes, sir.
Q. And you saw more mittens there, did you?
A. I saw several pair of mittens.
Q. And you saw three pair of mining shoes?
A. I saw three pair of mining shoes; yes, sir.
Q. The same style of shoe this man is wearing? All of that style?
A. Well, that style or about it.
Q. That style or about it?
A. Yes, sir.
Q. You mean these tan-colored, heavy shoes?
A. I did not mention as to color; it is to the shape of the shoe.
Q. Well, they are a shoe of that class?
373 Q. They were a heavy shoe of that class?
A. Yes, sir.
Q. You recognized still more underclothes there in your examination yesterday?
A. I do not exactly understand your question.
Q. Did you not recognize underclothes in the court room yesterday in your examination?
A. I recognized them in a general way—that they were articles that would answer the description of those.
Q. Now, there were some overshoes there besides the common shoes, were there?
A. Yes, sir.
Q. And you remember the character of those shoes simply from memory?
A. I had nothing else to guide me.
Q. You did not testify because these things were before you?
A. Yes, sir; having seen them before, a person can recognize it.
Q. And you remember seeing two stones there?
A. Yes, sir.
Q. And you recognized the bag of Fred Hardy's, you said?

A. I recognized the bag I had seen in Fred Hardy's bunk; also one which I had seen the material in Hardy's hands before it was in the shape of a bag.

Q. You also recognized razors, pocket knives, and pencils?

A. Pencils that would answer the description.

Q. Memorandum books?

A. Yes, sir.

374 Q. Articles of jewelry?

A. There were several articles of jewelry.

Q. Shaving brushes?

A. I can not say that I remember shaving brushes. Two articles of the same description may be placed before me and it would be very hard to pick them out.

Q. What article was it that had the price on it?

A. It was a compass.

Q. One dollar and twenty-five cents?

A. One dollar and a quarter.

Q. Now, you remember that distinctly, without ever having seen it until you saw it in the court room?

A. Yes, sir.

Q. Without having seen it since you left the cache?

A. I did not see it.

Q. Did you see it after your arrest, before it was produced in the court room?

A. I saw it on Unimak Island.

Q. From that time on until it was produced in the court room did you see it before?

A. I saw it at the preliminary examination.

Q. From the preliminary examination, did you see it until it was produced in the court room?

A. I should say no.

Q. You recognized boots?

A. I said there were several pairs of rubber boots.

Q. Another shirt, a coat, some shoes, a hat, and more gloves—

375 all those things you testified to from recollection only, or having seen them in the cache?

A. I remember that I said I could not testify to the cap.

Q. Now, how far did you say this cache was situated from the mouth of the creek that runs up from Cape Lapin?

A. I do not remember to having stated the exact distance.

Q. You say you suggested to Hardy that all that he ought to take from the cache was just a little food?

A. I did.

Q. Is that all you took?

A. It is not.

Q. You say when you went to Rosenberg's cabin, the cabin where Rosenberg himself was, that when you approached the door you handed the shotgun to Hardy?

A. I did so state.

Q. Is that the shotgun that was introduced in evidence here that you refer to?

A. It is the shotgun that I refer to.

Q. Who was carrying the rifle?
A. Fred Hardy.
Q. And you were carrying the shotgun?
A. Yes, sir.
Q. How long, did you say, after you arrived there, you and Hardy, was it that Rosenberg left the cabin? To be more explicit with that question, how long did you say it was after you and Hardy arrived at Rosenberg's cabin that Rosenberg left the cabin?
A. That is the same question over again; you will have to put it in a different manner.

376 Q. You can read and write English pretty well?
A. I think I can.
Q. Speak it pretty well, can not you?
A. In a certain way.
Q. I wish you would answer the question then.
A. Fred Hardy and I stayed in the cabin that night with Rosenberg—we arrived at the hour of about, well, I do not know exactly, but it was after dark—until the next morning; the exact hour I do not know. Rosenberg informed us that it was the night of July 3rd.
Q. Have you finished your answer?
A. Rosenberg left the cabin in my company; Hardy remained. Hardy was the first to arise in the morning. Rosenberg left the following morning.
Q. He went up to where you got the dory, did he not?
A. He went with me.
Q. Up to where you got the dory?
A. Got what dory?
Q. The boat.
A. Where Fred Hardy and I had left the dory.
Q. Did you go to get the dory with him?
A. I went with Mr. Rosenberg and brought the dory down to or near the cabin where Hardy was.
Q. Did you get that dory?
A. I did not.
Q. You went there for that purpose?
A. I did.

Q. He went with you to the place where you expected to get
377 the dory, did he not?
A. He helped me to push the dory off the beach.
Q. You did not get the dory at all, you say?
A. I pulled the dory down part ways.
Q. You mean you were in the dory, in the water?
A. I got into the dory after Rosenberg and I had put the dory in the water.
Q. Then you found the dory when you got there?
A. The dory was just where we had left it.
Q. The dory was there that you went after, was it?
A. It was.
Q. And you got into it?
A. After pushing it into the water, with the assistance of Rosenberg.
Q. Then you got into the dory, did you?

A. I got into the dory.
Q. Then you started to row, did you not?
A. I did.
Q. What became of Rosenberg?
A. He stood on the beach a few minutes and then went east.
Q. That was the last time you saw Rosenberg on that trip, was it not?
A. That was the last time I saw Rosenberg on that trip; yes, sir.
Q. What did you say you did with that dory?
A. When?
Q. The day that you and Mr. Rosenberg went up there and pushed it from the beach into the water, and after you got in it and started to row away; what did you do with that dory?
378 A. I rowed the dory as far as I could against the wind and tide, and then I beached it.
Q. How far from where you started did you beach the dory?
A. Possibly a mile.
Q. How far from Rosenberg's cabin?
A. To the eastward of Rosenberg's cabin about a mile. I did not measure the distance.
Q. Then from Rosenberg's cabin to where you went for the boat was about two miles, was it?
A. About that; yes, sir.
Q. You say you took these guns to pieces, or that you took these guns and wrapped them up and put them under the eaves of Rosenberg's cabin?
A. I said that Fred Hardy, the defendant, had them wrapped *them* up when I returned after going with Rosenberg, and after that he unwrapped them and took the guns apart and put them outside the cabin.
Q. Did you not say that you yourself wrapped the guns up and put them under the eaves of the cabin?
A. I re-wrapped them. I placed them in a more secure manner than they were.
Q. You put them under the eaves of the cabin?
A. I did.
Q. Who found these guns afterward?
A. It was not necessary to find them; they were never lost.
Q. Who found them?
A. I did.
Q. Who had you point them out?
379 A. Mr. McGinn, Marshal Richards, and Owen Jackson.
Q. They were in the same place that you left them originally? Evidently had not been disturbed?
A. They had not been disturbed to all appearances.
Q. Was that inside or outside the cabin that you had placed them?
A. It was under the eaves of the cabin, on the outside.
Q. While you were at the cabin I believe you stated that you had some communications with Mr. Rosenberg in regard to taking you and Mr. Hardy somewhere, and Hardy was also a party to it? Are you able to state the time? Say yes or no.
A. We did not have any communications with Rosenberg at the time that Hardy and I were in the cabin.

Q. While Rosenberg was there at the cabin, you had communications with him in regard to taking you and Hardy somewhere?

A. We did.

Q. He wanted to charge ten dollars, you say?

A. I did not say he wanted to charge ten dollars.

Q. What did he say about a price?

A. I do not know that he stated a price.

Q. Are you sure that nothing was said about ten dollars in that conversation?

A. In the course of a conversation that Hardy and I had ten dollars was mentioned. I said to Hardy to offer him ten dollars.

Q. What did you say Hardy's reply was?

A. He said it was too much.

Q. Where was it that you wanted Rosenberg to take you and Hardy?

A. Belkofsky.

380 Q. Is that on the mainland?

A. It is on the mainland.

Q. You say that you called at this other cabin of Rosenberg's, where you found this board with the writing on it signed by Mr. Jackson?

A. I could not very well find the board at the cabin if I had not been there.

Q. Do you understand my questions?

A. Yes, sir. Where I had seen it. Yes, sir.

Q. What day of the week was that?

A. The natives informed me that it was the Fourth of July. I have no distinct recollection of what day of the week it was. I kept no diary.

Q. Where were you on the third of July?

A. At a cabin belonging to Charley Rosenberg.

Q. Where you saw Charley Rosenberg?

A. Yes, sir; the evening of the 3rd.

Q. I want to refresh your memory in regard to a matter. Did you not testify yesterday in your direct examination that you told Mr. Rosenberg about these natives while you were at this cabin?

A. I did.

Q. The evening of the third?

A. Yes, sir; the evening of the third, when Hardy and I arrived there.

Q. Now, then, you say that you finally arrived at some point, you and Mr. Hardy, where you met a man by the name of Gaffney. Is that correct?

381 A. Yes, sir.

Q. And you talked to Gaffney or somebody at that point in regard to taking you away from there or procuring a dory for the purpose of getting away?

A. Both Hardy and myself in conversation with Mr. Gaffney and others.

Q. Why was it? What reason did Hardy give for not accepting their terms?

A. He thought it was too much money.

Q. Did you want to go?

A. I most assuredly did not want to stay there.

Q. You testified yesterday, I believe, that Gaffney made a request for the delivery of any revolvers which you might have. Did Hardy surrender his?

A. I do not know whether it was Hardy's or not.

Q. Did he surrender the revolver he had in his possession?

A. That I do not know.

Q. You surrendered yours?

A. I did not own one.

Q. Did you surrender the one you had on your person?

A. At Hardy's request I did not. I had one which Hardy had given me.

Q. How long did you carry that revolver?

A. From about the twentieth of June.

Q. You say afterwards that a dory was purchased from Gaffney or somebody there. Is that correct?

A. I did not say that a dory was purchased.

Q. What was done about a dory?

382 A. Fred Hardy wanted to purchase a dory.

Q. For what purpose?

A. To get off the island. There were no dories for sale.

Q. You said you acquired a dory there for some purpose, did you not?

A. There were two dories issued to us, one to each, for the purpose of fishing.

Q. Was there any money paid for those?

A. Hardy placed on deposit sixty-five dollars.

Q. Then you and he went to fishing?

A. Yes, sir.

Q. You had one dory and he had the other?

A. Yes, sir.

Q. You spoke yesterday about Hardy. You remarked to Hardy that he was a walking arsenal.

A. I did.

Q. That he had a great deal of ammunition; had a belt containing a great deal of ammunition?

A. He not only had a belt, but he had a rifle, a six-shooter, and both weapons were loaded.

Q. Did he have ammunition?

A. Yes, sir.

Q. Have ammunition when you first saw him?

A. I first saw him in the city of San Francisco.

Q. Well, after you left on the schooner "Arago" did he have ammunition; when you first saw him after that time?

A. He did.

Q. You say while you were around or about that cache, in that

383 neighborhood, that you told Hardy that you thought you saw something that looked like a human being up on a bluff. Is that correct?

A. I did not state that it was in the vicinity of the cache.

Q. Nor in that neighborhood?

A. It was if you want to make a radius of twenty miles a neighborhood.

Q. How far from this cache was it?

A. Was what?

Q. The place where you told Hardy you thought you saw a human being on the bluff.

A. I do not know the exact distance; I am not a surveyor.

Q. You did not have a surveying instrument with you?

A. No, sir; I do not carry them.

Q. Did you have a measuring instrument with you at any time on this trip with Hardy?

A. No, sir.

Q. So you did not take any measurements?

A. No, sir.

Q. I wish you would give me an estimate of how far from this cache was it that you made the remark to Hardy that you thought you saw a human being on this bluff?

A. It was the first point to the eastward.

Q. Now could you give any estimated distance from the first point to the eastward and this cache?

A. It would take about three or five hours' walk from the cache to the point.

384 Q. You stated a while ago that it was not in the neighborhood unless I called twenty miles the neighborhood.

A. I did not state that it was.

Q. I asked you within a radius of twenty miles. I wish you would give some idea.

A. If you give plain questions I will answer them plain.

Q. How far is it from this first point to the eastward, that you speak of, in the best of your judgment?

A. Possibly ten miles.

Q. Hardy went up in that direction, you say, where you thought you saw a human being?

A. Both Hardy and I were together.

Q. Did you see anyone there?

A. Hardy went in a different direction from where I went.

Q. Then you did not go together?

A. I was not tied to him. I was in Fred Hardy's company from the cabin, Rosenberg's; we went in an easterly direction, and I sighted what I took to be a human being on top of a knoll. I spoke to Hardy about it. Hardy branched away from the beach. I walked away a little distance and returned and called him. He came back and we went along down the beach together. We passed the point where I said I had seen this individual, and then Hardy went back and went to this point.

Q. Did you go with him?

A. I did not.

385 Q. Afterwards you testified that you saw, or thought you saw, another person while you were on this trip with Hardy. Do you remember that?

A. Yes; I testified that I saw several other persons.

Q. Do you remember testifying that you had stated that Hardy stated that some person that they had met saw an Indian with a rifle? Do you remember that?

A. Yes, sir.

Q. How far away did that thing occur from this point where you state you thought you saw this other human being?

A. We had passed the point where I thought I saw this other human being, and Hardy returned to the point I indicated; he then came back and reported to me that the individual was an Indian and had a rifle.

Q. Then, as I understand it, you mean that the only person that was seen there was an Indian with a rifle? This is the same instance?

A. Yes, sir; the same instance.

Q. What day of the month was that?

A. It was the same day that we had left the cabin at Rosenberg's; when we arrived at the Indian camp, two miles from where this instance had taken place, the natives informed us that it was the Fourth of July.

Q. Where did you say you came from when you arrived at San Francisco and took this boat?

A. From Honolulu, Territory of Hawaii.

Q. How long had you been there before you went to San Francisco?

A. About nine months.

Q. What occupation had you been engaged in there?

A. Carpenter.

Q. Where were you before you went to Honolulu?

A. Several different places.

Q. Well, immediately before?

A. I was in an American ship called the "J. B. Brown."

386 Q. In what waters was she plying?

A. In the Pacific.

Q. How long had been in the employ of that vessel?

A. I shipped in Newcastle, N. S. W.

Q. How long were you in its employ—how many months?

A. About fifty-four days.

Q. Did you state yesterday whether or not Hardy said to you anything about the time when he left the "Arago," on Unimak Island?

A. I stated that Fred Hardy told me different stories.

Q. Did you state anything about his saying to you the time he left the schooner "Arago," on Unimak Island?

A. I said that he stated to me that he had left the schooner when she was watering, and the members of her crew were putting fresh water aboard.

Q. Did you state the day, as regards the time, when he left; did he give it to you?

A. I did not state the date.

Q. Did he tell you when he left the boat as compared with the date when you left it?

A. He told me two or three different stories about the time when he had left the schooner.

Q. Did he tell you at any time the date that he left it as compared with the time you left it?

A. He never told me the date; he told me once that on the day foll'ing the one I left the schooner he and the mate nearly capsized alongside of the ship. He also stated at another time that he and another member of the crew had pulled over onto Snapper Island the day following the day I left the ship.

Q. Do you remember that conversation distinctly?

A. I remember Fred Hardy having stated that to me. He also stated that he left the schooner when the parties were watering; he told
387 me two or three different stories concerning the things that took place immediately before.

Q. You remember this individual you spoke of a while ago?

A. Yes, sir.

Q. I will ask you if you did not in your affidavit not refer to the time when Hardy said to you he had left this boat, state as follows (this refers to a statement made by Hardy at Scott's camp): "I had a conversation with Hardy that night, the 20th of June, and I asked him when he left the 'Arago,' and he said three or four days after you did."

A. That was one of the answers he gave me.

Q. I ask you if you made this affidavit?

A. I made the affidavit, yes, sir; that is, I signed my name to it.

Q. Did you say anything in this affidavit anywhere about his having made any other statement to you about when he left this boat?

A. Yes, sir; I did.

Q. What other date did you give that you stated in your affidavit that Hardy left this boat, that he stated to you?

A. I don't remember giving any dates.

Q. Is it not a fact that all you added to this affidavit, except what I have read to you, was this, after the words which I have quoted to you, "three or four days after you did"—he then told you that he had come ashore with a watering party and that he and a fisherman named Charlie had gone back into the mountains for the purpose of hunting for bear?

A. He said that; yes, sir.

Q. Is there any other statement in this affidavit in regard to the time Hardy stated he left this boat?

A. If you will read the affidavit I will tell you.

Mr. SULLIVAN. I would suggest, if the court please, that Mr.
388 Aston be allowed to read his affidavit, to save time of reading it.

COURT. That will be allowed.

A. I stated in here that about the middle of April he left San Francisco.

Q. That is not the question. Did you find any other statement in that affidavit as to Hardy stating to you, except the one mentioned as to the time he left the "Arago" at Unimak Island?

A. He came ashore with the watering party.

Q. That was what he said to you, was it not?

A. Yes, sir.

Q. Do you find anything else besides that?

A. That he had left the boat three or four days after I did.

Q. Anything else besides that?

A. Yes, sir.

Q. About when he left the boat?

A. Yes, sir; that when he left the boat that he and the mate had gone up the beach and had seen a tent on the beach.

Q. Did that refer to when he left the boat?

A. I' was in reference—yes, sir.

Q. I wish you would point that out to me—these things Hardy subsequently told you.

A. "A different story to the effect that when the party arrived on the beach to get water that they saw a tent standing upon the beach near a small creek; that while they were still quite a little distance from the shore they heard the reports of guns and saw three men rush out of the tent and go in different directions."

Q. That is the one that you pointed out to refer to the time when he left this boat, is it?

A. Yes, sir; it refers to the time when he left it.

Q. When you made this affidavit you knew that Mr. Hardy had asked for a continuance in this case, did you not?

389 A. I did not.

Q. Were you told anything about it at all?

A. Not personally—no, sir.

Q. Did you know what the affidavit was being made for?

A. I was not aware of any circumstances particularly.

Q. Now you say that you were acquainted with Hardy at San Francisco?

A. I stated that I saw Fred Hardy on the Fisherman's wharf at San Francisco.

Q. Did you not say in your direct examination that you knew him in San Francisco?

A. I had seen Fred Hardy on the Fisherman's wharf alongside of the schooner "Arago" in San Francisco.

Q. Did you not say that you were acquainted with Fred Hardy for about a week before you left San Francisco?

A. I did not; before the schooner left San Francisco we lay in the bay two or three days before we came up.

Q. Was it on the schooner that you first met him?

A. It was on the Fisherman's wharf alongside the schooner.

Q. Was that the first place?

A. Yes, sir.

Q. Did he go onto the schooner at that time?

A. He went aboard the schooner.

Q. Did you go aboard the schooner?

A. I do not know that I went aboard at the immediate time.

Q. How along afterwards did you go aboard the schooner?

A. Well, I had been aboard the schooner before I had seen Fred Hardy.

Q. How long after Hardy went aboard at this time was it that you went on?

A. By going aboard the schooner, as I understand it in a nautical term, is when you sign and take your clothes aboard.

Q. You stated that Fred Hardy may have got onto the schooner in some way at the time you first saw him on the wharf alongside

390 of the schooner.

Q. How soon after that occurred was it before you went on this boat, either aboard of her, on the side of her, or in any other way?

A. It would be hard to say.

Q. Well, to the best of recollection.

A. I was on and off the schooner at frequent intervals during the

time. Well, i' might be five minutes after or it might be two or three hours after—pos'tively, I cannot say.

Q. Was it the same day?

A. I believe it was.

Q. What month was this?

A. March, I believe.

Q. You don't remember the day of the week, do you?

A. About the 23rd of March I should think.

Q. Did Fred Hardy remain on this schooner all the time after you saw him first go on her until she departed from San Francisco?

A. No, he did not.

Q. Did you meet him any place away from the schooner after he first went aboard of her?

A. I do not particularly remember whether I did or not; we were both employees of the boat—I was signed as a fisherman and Hardy was also.

Q. After you arrived in the waters of the Behring Sea, before making any landing what was the boat doing?

A. At anchor, cruising.

Q. What was she cruising for?

A. Fishing berths, to enable her to get a place to fish.

Q. How long were you in the waters of Behring Sea before you made a landing—that is, before the vessel landed, I mean?

A. About a month, I should judge—do not distinctly remember.

Q. You say you left this vessel on second day of June, 1901?

391 A. It was the first Sunday in June; I afterwards found it to be June 2nd.

Q. Is your true name George Aston?

A. Yes, sir.

Q. Did you ever go by the name of "Charles Rose" or "Roe?"

A. I have not; I have never gone under an alias.

Q. How was your name known to Rosenberg—as "Arkel" or "Aston?"

A. As George Aston.

Q. As George Aston?

A. Yes, sir; to the best of my belief. It is the name I always use; sometimes people make a mistake and pronounce it "Ashton."

Q. This dory that you say you went after, situated about a mile or two miles from Rosenberg's cabin—you had left the dory at that place where you went after it?

A. Fred Hardy and I.

Q. Where had you taken it from?

A. The dory was originally one that was taken from San Francisco aboard the schooner "Arago." Dory number eleven.

Q. Just immediately prior to the time that you left it that day, where had you taken it from?

A. Fred Hardy and I had taken the dory from Otter Cove in the first place; I had taken it to Otter Cove.

Q. Did you have this dory when you left the vessel, you say?

A. Yes, sir; dory number eleven; port nest.

Q. Did you go direct to this place where you left the dory, about two miles above Rosenberg's cabin, from Otter Cove? Had you been somewhere else with the dory in the meantime?

392 A. Hardy and I had taken the dory from Otter Cove; we stopped at the mainland, about half way between Marzovio and the starting point; we had also gone over to the village of Marzovio and had also gone over to Unimak Island about four miles from Marzovio. We had also taken the dory over on a sand spit about three or four miles after we landed on Unimak Island and after leaving Marzovio. Hardy and I had pulled the dory over the sand spit onto the Behring Sea side of the sand spit. Hardy and I had sailed in the dory and had made two landings before we beached the dory—the last time before we reached Rosenberg's cabin—and I had made one attempt afterwards and Hardy and myself had made another attempt to get the dory off the beach, but were unable to. Charley Rosenberg and I had at another time taken the dory off the beach from where Fred Hardy and I had landed. I had pulled the dory a little farther to the westward and beached it again. The last time I saw the dory Fred Hardy and I pulled the dory up on the beach once to the hills and turned it upside down. It was a painted dory, number eleven.

Q. You also say that after you left Otter Cove you touched the mainland with the dory?

A. Yes, sir.

Q. What day of the month was that?

A. It was the same day and about three or four hours after we had left Scott's camp.

Q. You went to the mainland in this dory?

A. Yes, sir; we stopped on the mainland.

Q. Did you get out of the boat on the mainland?

A. We did.

Q. You made a landing?

393 A. Yes, sir.

Q. After you left that dory between Rosenberg's house and the place where you went after it, when did you next see the dory?

A. That is kind of an indefinite question to ask. It does not have reference to any particular house of Rosenberg's.

Q. You testified that you left this dory about a mile from the cabin where you and Hardy met Rosenberg, did you not?

A. Yes, sir.

Q. When was the next time after you left that place—did you next see it again?

A. I went up alone myself.

Q. When was it?

A. A day or two after Hardy and I had arrived at Rosenberg's cabin.

Q. A day or two?

A. Yes, sir.

Q. How long were you at Rosenberg's cabin?

A. We stopped over the first night. That would be about the 25th or 27th of June; I am not positive. It may be a day later or a day earlier. I am not exactly positive. Hardy and I stayed two nights in the cache.

Q. Were you at this cabin before or after you had been at Cape Lapin, in the vicinity of this cache?

A. This cabin of Rosenberg's is to the eastward; yes, sir.

Q. Which was it—after or before?

A. It was before—before Hardy and I went to the cache we stopped at this cabin.

Q. You think that was about the twenty-sixth or twenty-seventh of June?

394 A. Yes, sir.

Q. Did you take that dory around with you?

A. Hardy and I had left the dory to the eastward of Rosenberg's cabin.

Q. When you left it to the eastward of Rosenberg's place did you take the dory over there in the vicinity of this cache?

A. No, sir.

Q. You left the dory about a mile from Rosenberg's cabin?

A. About that distance. I stated that Charley Rosenberg and I went——

Q. I do not mean that. I asked you when the next time was that you saw this dory after you had moved it down about a mile from Rosenberg's house. When did you see that again?

A. I saw it on two or three occasions.

Q. When was the first time you saw it after that?

A. About on the evening of the twenty-sixth Hardy and I beached the dory at this point, a couple of miles, possibly.

Q. Was that the place where you and Rosenberg went after it?

A. Yes, sir.

Q. You say that you and Hardy beached it there. Now, then, try to figure up. You and Hardy beached the dory. Now, carry yourself down to where you next reached the boat and Rosenberg helped you to put it in the water about a mile from his house. After you came down and beached it again, state to me when was the next time after that that you saw the dory—the first time?

A. After I had pulled the dory about a mile from where Hardy and I landed it, the next time I saw it was when Hardy and I had gone up to it.

395 Q. When was that?

A. It was the same day that we left Rosenberg's cabin.

Q. The same day?

A. Yes, sir.

Q. Did you say whether or not you took that boat around in the vicinity of where this cache was?

A. That boat was not further west than about a mile east of Rosenberg's cabin and possibly about six miles to the eastward of the cache.

Q. How far from Rosenberg's cabin?

A. About a mile to the eastward; the cache is about three miles to the westward.

Q. You say that the day after you and Hardy left Rosenberg's cabin, you saw the boat?

A. Yes, sir; I pulled it up on the beach and cached it.

Q. And it remained there?

A. It was there when I last saw it.

Q. When did you last see it?

A. The day that Hardy and I pulled it up close to the hill.

Q. Is that the last time you saw it?

A. Yes, sir; that is the last time I saw it.

Q. It was while you were at Rosenberg's cabin on this trip that you and Hardy were talking to Rosenberg about being taken to the mainland?

A. Charley Rosenberg informed us that it was the evening of the third of July.

Q. That was the same trip, was it not?

A. Yes, sir.

396 Q. When you pulled that dory up on the beach or off of the beach next to the hill, did you attempt to conceal it?

A. I told Rosenberg where we would leave the dory if Hardy and I could not get into it. The wind and sea was too much so that we could not get into it.

Q. That day?

A. Yes, sir.

Q. Was Rosenberg there that day that you left his cabin?

A. Rosenberg and I left on the morning following the night that Hardy and I had first seen him there and whether he was back after that I do not know.

Q. Did you tell Mr. Rosenberg that Hardy and yourself had pulled this boat up on the beach on the day that you left the cabin and that you and Hardy could not get it down in the water on account of the surf?

A. I told him that we would leave the dory and I also told the natives where we had left the dory.

Q. Did you not testify yesterday in your direct examination that Charley Rosenberg helped you put this dory in the water; that you rowed in the dory as far as you could and then beached it?

A. Yes, sir.

Q. Did you not swear to that?

A. Yes, sir; I said that the wind and tide was too much for me.

Q. Did you see Mr. Rosenberg after you beached the dory this time before you left the cabin, you and Hardy?

A. I did not see Rosenberg; I saw some parties there, but who they were I could not tell.

Q. Was Rosenberg there?

397 A. No, sir; not to the best of my knowledge.

Q. I ask you if, when you and Hardy pulled that boat up on the beach, whether you concealed it or not?

A. We turned it upside down close to the sand hill.

Q. Put it under anything?

A. In kind of a sheltered nook; yes, sir.

Q. You have never seen it since?

A. No, sir; I have not.

Q. You and Hardy undertook to go in the dory that day?

A. The day that we went back from Rosenberg's cabin the surf was too much and we made no attempt to run the dory into the sea. We took it up and beached it.

Q. Then after that you told Rosenberg that the sea was too high and that you had beached it?

A. I do not remember having seen Mr. Rosenberg after that. I did not tell him; I told Charley Rosenberg that we would leave the dory some place and he asked me to put it in a secure place so that it would be

secure. I also told the natives after we reached their camp where the dory was.

Q. Whose dory was this?

A. It belonged to Lind and Hoff originally; it was aboard the schooner "Arago" and it was issued to me as one of the fishermen aboard the schooner.

Q. You had taken this boat from the "Arago."

A. The boat was issued to me.

Q. I do not care about it being issued. You had the boat?

A. Yes, sir.

Q. You say that you told Rosenberg that you would tell the
398 Indians where that boat was to be left, and he told you to leave it in a safe place?

A. Yes, sir.

Q. Is that what you stated?

A. I said I told Rosenberg that I would leave the boat.

Q. And he asked you to leave it in a safe place?

A. Yes, sir; I also told him if we had to go up there we would try to signal if we had to walk.

Q. I think I understood you to say some time yesterday that you asked Hardy if he had any papers among this outfit of stuff?

A. I asked him if there were any papers.

Q. You asked him that question yourself?

A. I asked him that question; yes, sir.

Q. How long had you and Hardy been working at Gaffney's place before you were arrested?

A. About two weeks.

Q. About two weeks?

A. Yes, sir.

Q. After you went up to this cache that you speak of, you did not return by way of Rosenberg's cabin, did you?

A. We went from Otter Cove to the cache, Hardy and I, and we went——

Q. I just asked you the question whether you returned by Rosenberg's cabin.

A. Which cabin is that?

Q. Well, by the cabin that you met Mr. Rosenberg at.

A. We returned by that cabin when we returned from the cache.

Q. How long after had you been at that cabin?

A. I was there about ten days ago.

Q. After you left the cache, did you come back or return any-
399 where by this cabin of Rosenberg's when you and Hardy met him?

A. When Hardy and I left the cache we went to this cabin where we met Rosenberg. We did not return to the cache after we left Rosenberg's.

Q. When you went to Rosenberg's cabin, when you met Rosenberg, you and Hardy, it was after you had already been at the cache?

A. It was.

Q. Did you not swear a while ago that it was before?

A. We were there before also.

Q. Did you not just now state that you were there once and it was afterwards?

A. I told you that when Hardy and I went down we stopped one night in Rosenberg's cabin; that we had stopped two nights in the cache; that we had stopped again in Rosenberg's cabin.

Q. Did this conversation at Rosenberg's cabin, with Rosenberg, in regard to getting onto the mainland occur before or after you and Hardy had been at this cache?

A. After we had been to the cache.

Q. Did you not swear a while ago that it was before?

A. I did not.

Q. Did you say that was on twenty-sixth or twenty-seventh of June?

A. I said Rosenberg said it was the third of July.

Q. That is the time you saw Rosenberg?

A. I saw Rosenberg several different times.

Q. Did you see him at the cabin on the twenty-sixth or twenty-seventh day of June of this year?

400 A. I did not.

Q. Did you not testify on your cross-examination this morning that this conversation occurred on the twenty-sixth or twenty-seventh day of June, about going to the mainland?

A. I testified that the conversation I had with Charley Rosenberg, in which Hardy was also included, was part on the morning of July fourth and part on the preceding night.

Q. Did you and Hardy intend to use this dory in going towards the cache when you went down and beached it on the day you left Rosenberg's cabin?

A. No, sir.

Q. Did you not testify a while ago that you went down for the purpose of getting this boat and the surf was too high?

A. I went there for the purpose of getting the boat over to the cache. I went from the cache to the dory, but that was previous to seeing Rosenberg in the cabin.

Q. I understood you to say a while ago that you had already told Rosenberg that in case you did not get the dory out and had to walk you would let him know where you left it.

A. I told him that on the third of July.

Q. Was that after you had been to the cache?

A. Yes, sir.

Q. On the twenty-sixth or twenty-seventh of June, did you meet Rosenberg at his cabin?

A. I did not.

Judge to jury: Gentlemen of the jury, you will remember the
401 admonition which I have each time given you, that you are to hold no communication with any person about this trial while you are on the jury, nor are you to permit anyone to talk to you in any way. You will go now in charge of the bailiff and return to the court room at one fifteen o'clock to-day.

And thereupon the court was ordered to stand adjourned until the hour of one fifteen o'clock p. m. this day.

402 UNALASKA, ALASKA, ONE FIFTEEN P. M.,
Wednesday, September the Fourth, 1901.

All present. Proceedings resumed pursuant to adjournment.

GEORGE ASTON. (Cross-examination resumed.)

Q. (By Mr. SULLIVAN.) Mr. Aston, you say that the first time you met Mr. Hardy, after you left the schooner "Arago" on Unimak Island, was on the twentieth day of June?

A. Evening of the nineteenth.

Q. Where were you on the twentieth day of June?

A. Part of the time in Mr. Scott's camp, on the sand spit near Otter Cove, near False Pass, and part of the time in the dory going towards pass; part of the time on the mainland; part of the time in the village of Marzovio; part of the time in the dory and part of the time on the island of Unimak, about four miles distant from Marzovio.

Q. Who was with you on that date?

A. Fred Hardy.

Q. You remember this affidavit that you have before you? Did you not state in that affidavit, "That on the 20th day of June I returned from Lazareff, where I had gone with Mr. Collinwood for the purpose of getting provisions, and found upon my return that Fred Hardy was at the camp?"

A. It is a slight mistake in the date.

Q. Slight mistake?

A. Yes, sir; the evening previous to the morning that Hardy and I met Mr. Collinwood and I returned from Cape Lazareff.

Q. If you made that statement in the affidavit it is not correct?

403 A. There is a mistake in the date.

Q. Did you make that statement in the affidavit I read to you?

A. I made the statement in the affidavit that I believed to be correct.

Q You stated in your affidavit that it was on the 20th day of June that you first met Hardy?

A. I am not positive whether I stated that.

Q. Look at that statement and state whether you stated it was on the 20th of the month.

A. Well, it reads that way. I know it is a mistake in it.

Q. That is your affidavit, and it contains that statement, does it not?

A. Yes, sir.

Q. I will ask you if you did not meet Hardy after the 10th day of June and before the 15th day of June, 1901.

A. I did not; no.

Q. I will ask you if you and Mr. Hardy were not hunting between the 12th and 15th days of June, 1901?

A. We were not.

Q. I will ask you if you and Mr. Hardy were not hunting between the 12th and 15th days of June and that you had with you these two guns that have been produced in evidence here, the rifle and shotgun?

A. I do not know whether Hardy was or not.

Q. I asked you if you were not hunting?

A. No, sir.

Q. Did you not carry one of these guns and he the other?

404 A. No, sir; I had not seen Hardy from the Sunday I left the schooner. I did not see Fred Hardy until the evening previous to the day we left Scott's camp.

Q. Did you ever hunt on that island?

A. I have been hunting.

Q. Did you ever hunt with Mr. Hardy?

A. Yes, sir.

Q. Did you ever use these guns?

A. Yes, sir.

Q. When was that?

A. About the twenty-sixth of June, or between the 26th of June and the 3rd of July.

Q. Between the 26th of June and the 3rd of July you were hunting?

A. Yes, sir.

Q. Did you testify something about killing a ptarmigan in your testimony?

A. I did.

Q. What day was that?

A. On the afternoon of the day on which we met Mr. Rosenberg in his cabin, and which he informed us was the third of July.

Q. That was when you were in Rosenberg's cabin the last time?

A. Yes, sir; the time I was going from the cache to Rosenberg's cabin.

Q. On your way?

A. Yes, sir.

Q. Did you ever see Mr. Hardy shoot at any deer at any time?

A. I have.

Q. When was that?

405 A. Between the 26th day of June and the third or fourth of July.

Q. Did you at any time after your departure from the schooner "Arago," at Unimak Island, see the schooner or any of the crew?

A. I did not see any of the crew, and whether it was the schooner or not I could not say. On the day following, the day on which I landed at the island, I believe, the natives in whose camp I was called me out of the tent and informed me that there was a schooner cruising around.

Q. You do not know of your own knowledge whether it was the "Arago" or not?

A. No, sir; I do not.

Q. You say you were employed in San Francisco, you and Hardy, as a fisherman?

A. I signed in San Francisco.

Q. Well, that was where you were hired, was it not?

A. Yes, sir; I signed in San Francisco. I do not know whether Hardy signed aboard the ship or ashore.

Q. At San Francisco?

A. That is where we were signed as fishermen; yes, sir.

Q. The boat was lying in the bay at San Francisco, was it not?

A. It was lying alongside Fishermen's wharf.

Q. In the bay at San Francisco?

A. She was lying alongside Fishermen's wharf in San Francisco, and she was afterwards moved into the bay.

Q. That was where you signed these articles, was it not?
A. I signed articles in the office of Lind & Hoff.
Q. And Hardy signed aboard the vessel?
A. I do not know.
Q. How long a time did you sign for?
406 A. For the cruise.
Q. The season's cruise of that boat?
A. Yes, sir.
Q. You deserted the ship when you arrived at Unimak Island?
A. I did not desert the ship; I was unable to return to it.
Q. Did you not see a ship while you were in the dory—a schooner?
A. Yes; I have seen schooners when I was in the dory.
Q. That was after you left the "Arago?"
A. I saw the "Arago;" that is, I saw a ship in the same position.
Q. While you were in the dory after you left the "Arago," did you not see a schooner going in the direction of your dory?
A. I did not.
Q. Did you not tell Mr. Hardy that you saw the "Arago" and were afraid it would overtake you?
A. I did not.
Mr. SULLIVAN. That is all.

407 Redirect examination:

Q. (By Mr. McGINN.) Mr. Aston, you testified in your direct examination that you left the fishing schooner "Arago" on the evening of June 2nd, and that on the 3rd day of June you accosted a native on the beach. Is that correct?
A. I landed on the beach on the evening of the third; while endeavoring to get the dory on the beach, a native came towards me.
Q. Did you know the name of the native?
A. Not at that time.
Q. Did you learn subsequently? Did you know his name at that time?
A. I could not say that I could pronounce it.
Q. Do you know where that native is?
A. I have seen him in Unalaska.
Q. Do you know Charley Rosenberg?
A. I do.
Q. Do you know where he is?
A. I am looking at him now.
Q. Mr. Aston, in regard to this date in the affidavit, which stated that about the middle of April, 1901, you left San Francisco, California, on the fishing schooner "Arago," for Behring waters, when did you first discover that you had made a mistake, if any, in that affidavit?
A. Well, shortly after I left the room in which I signed the affidavit; shortly after.
Q. What did you do in regard to it?
A. I spoke to the United States deputy marshal, and also to
408 yourself.
Q. I will show you this affidavit, Mr. Aston, and ask you to state whether or not it contains the statement that on the morning of the 20th of June, 1901, Hardy and I left Scott's camp for the place where he said the goods were landed.

A. Yes, sir; it does.

Q. Find that statement there? Answer yes or no.

A. Yes, sir.

Q. And that you signed this affidavit that contained the statement that on the 20th day of June, 1901, I returned from Lazareff, where I had gone with Mr. Collinwood; was it with knowledge that that was there?

A. Not intentionally; it was a mistake, the same as the date about the other.

Q. Where did you find this shotgun when you first saw it?

A. In a cache on the Behring Sea side of Unimak Island.

Q. Where was it in the cache?

A. It was in a gun case and under some blankets that were spread on some boards.

Q. You did not find it in a cabin, under the floor, did you?

A. No, sir; I did not.

Q. When you left Scott's camp with the dory, you intended to go to this cache; for what purpose did you go to the cache with the dory?

A. To get some provisions, blankets, and clothing.

Q. How did you expect to carry these provisions from the cache to Scott's camp?

Mr. SULLIVAN. We object to that as immaterial.

409 The COURT. Objection overruled.

Mr. SULLIVAN. We except.

A. In a dory.

Q. Why did you not use the dory?

A. On account of the water and the weather, and what I considered suspicious circumstances concerning the place and position of the goods, and also on account of the actions of Mr. Hardy, and also on account of Mr. Hardy's own request.

Q. What request was that?

A. That he was in such a hurry to get away from the cache in which we had stayed after seeing Mr. Charles Rosenberg.

Q. You had gone from Scott's camp to this cache for the express purpose of getting these goods, did you not?

A. Yes, sir.

Q. And left them there?

A. Yes, sir; with the exception of what articles we took.

Q. Now, Mr. Aston, take this map and point out to the jury the route to the cabin which you have spoken of, where you met Charley Rosenberg on the night of July 3rd, when he told you it was July third?

A. It was here.

Q. From that place, where was your boat beached?

A. About here.

Q. About how many miles from the cabin? In what direction?

A. To the eastward, and about a mile.

Q. When did you beach the boat there?

A. After pulling it down from where Hardy and myself first left it.

410 Q. Before you arrived at the cache, where did you beach the boat?

A. It was about here, sir.

Q. About how many miles is that from the cabin?

A. It took us about two hours to walk from where we beached the dory in the evening until we got to the cabin.

Q. Who was with you when you beached the boat at that time?

A. The defendant, Fred Hardy.

Q. After beaching the boat, where did you go?

A. We went along the beach for a ways and then went inland.

Q. Where did you go—to a cabin then?

A. Yes, sir.

Q. That was before you arrived at the cache?

A. Yes, sir.

Q. How long did you remain at the cabin?

A. We stayed in the cabin on the first night. We then went over to the cache and stayed there two nights; we came back and stayed in the cabin one night more, I think; then went over to the cache and got a few provisions and returned to this cabin again.

Q. Is that the night you met Rosenberg?

A. We met Rosenberg on the last trip from the cache.

Q. When was it that you removed the boat from the place where you and Hardy had put it to the place where it was at the time that you and Rosenberg went up there?

A. The dory had not been moved from where Hardy and I had beached it, until Charley Rosenberg assisted me to push the dory off and I pulled it some distance down towards the cabin.

Q. How close to the cabin?

411 A. About a mile.

Q. Then did you return to the cache after that?

A. No, sir.

Q. Did Charley Rosenberg ever agree to take you to Belkofsky?

A. He did not.

Q. Was there any agreement or arrangement made whereby he was to take you there?

A. Yes; I asked Charley what he would take to take us there.

Q. I now ask you if he agreed to take you?

A. Yes, sir.

Q. On what terms?

A. I offered him the dory and asked him first what he would take. He said he would not rob us.

Q. Were there any particular terms agreed upon?

A. No, sir; just spoke about it in a general way.

Q. You say, Mr. Aston, that one of the reasons why you did not use the dory in taking this stuff from the cache was because Hardy made a request of you?

A. Yes, sir.

Q. He stated that to you?

A. He did in a way.

Q. Another of the requests, so you stated a while ago, was that he was in such a hurry to get away from there after meeting Rosenberg.

A. That was what I was given to understand by Hardy.

Q. That is what Hardy gave you to understand?

A. Yes, sir.

Q. You are an able-bodied man, are you not?

412 A. To all appearances.
Q. Well, are you or not?
A. I consider myself such.
Q. Did you consider yourself such in June, 1901?
A. Yes, sir.
Q. Followed seafaring all your life, ever since you were seventeen?
A. Not continuously; I worked ashore some.
Q. Usually at sea?
A. Usually at sea; yes, sir.
Mr. McGINN. That is all.
Mr. SULLIVAN. That is all.
(Examination of George Aston closed.)

413 Mr. JOHN ABELSETT, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:
Q. (By Mr. McGINN.) Mr. Abelsett, where do you reside?
A. In Seattle.
Q. Where do you reside at the present time?
A. In Unalaska.
Q. When did you leave Seattle?
A. On the sixth of June.
Q. Of what year?
A. 1901.
Q. On what boat?
A. "Thomas F. Bayrd."
Q. Do you know where Cape Lapin is?
A. No; I do not know the name.
Q. Do you know where Unimak Island is?
A. Yes, sir.
Q. Were you on the west shore of Unimak Island——
Mr. SULLIVAN. I object to that question or to the witness testifying, on the ground that his name does not appear in the indictment.
(Argument by counsel.)
The COURT. I will at this time sustain the objection subject to its rejection before the trial is finished.
(Examination of Mr. Abelset closed.)

414 Mr. CHARLES ROSENBERG, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:
Q. (By Mr. McGINN.) What is your name?
A. Charles Rosenberg.
Q. Where do you live?
A. At Unalaska.
Q. Where is your home?
A. At Marzovio.
Q. Where is Marzovio?
A. On the peninsular.
Q. Across from Unimak Island?
A. Yes, sir.
Q. How long have you resided there?
A. I have resided there since '87.

Q. Were you residing there during the month of June of this year?
A. At times.
Q. Do you know George Aston?
A. I seen him.
Q. Where did you first see him?
A. On the fifth day of June, at Marzovio Pass.
Q. How long did he remain there with you?
A. He remained the fifth, sixth, and Seventh in the morning. I told him to go to a fishing station and see if he could get a job fishing.
Q. When did you next see him?
Mr. SULLIVAN. We object to the question as immaterial.
The COURT. Objection will be overruled.
Mr. SULLIVAN. We save an exception.
415 Q. Where did you next see George Aston?
A. On the night of the 30th of June.
Q. Where?
A. Over on Unimak, in my cabin, about the center of the island.
Q. Point out on this map. Point out the cabin where you saw Mr. Aston on the 30th day of June.
A. At Shaw Bay.
Q. Have you any other cabin along the coast?
A. Yes, sir; I own all the cabins except the one at Otter Point.
Q. How many have you?
A. I have one in the cove—"Captain's Cove." That one here is a native cabin; that one here is mine. There is one there that is not fit to live in. That one there is alone; that is four. I have one right on top of the hill; that is five. I own all of them. There is one here. There is one there, that nobody owns now.
Q. You say you saw Aston at that cabin on the night of June 30th?
A. Yes, sir; on the 30th of June or the first of July.
Q. You are positive that is the date, are you?
Q. Do you know if you are positive that you told him it was the third of July or not?
Mr. SULLIVAN. We object to that, a it is immaterial, irrelevant, and hearsay and an attempt to bolster the testimony of their own witness.
The COURT. Objection overruled.
Mr. SULLIVAN. Exception.
The COURT. Exception allowed.
Q. Do you know whether or not you told him that?
416 A. No, sir; I do not remember telling him anything like that at all.
Q. What time did you see him there?
A. About eleven or twelve o'clock.
Q. State to the jury, Mr. Rosenberg, what occurred there that night and who, if any person, was with George Aston at that cabin on the night of June 30th.
A. I came to my cabin, it must have been about six o'clock on the 30th of June. I was tired. I cooked something and turned in. When I was sound asleep I heard some one knocking on the door. Before I turned in I bolted the door on the inside with a big stick of wood. It is about a distance from here to the wall between the partition and the

door. About eleven or twelve o'clock some one came and hammered on the door and I got up. I opened the inside door and sung out "Who is there?" A man sings out "George Asel" or "George Ansel," or something like that. I sung out "Who is George Ansel?" He said "That is me." I said "Who is you?" He said "That is George." I said "George, is that you?" He said "Yes." I said "What do you want?" He said "I want to come in." I told him to come in. After he came in, I said "Who is that with you?" He said—I do not know what he said. He said "Joe." So he came in. When he got
417 inside I told him to light a lamp; it is dark. I do not know whether I lighted the lamp or he did. He took off his bundle and went to the door and sung out "Come on, Joe." He did not come. He came in again and went out again and sung out for Joe again "Come in, Joe." Finally, after that, a man came in. That is that man sitting right there. He came in. He had a roll of blankets around him. The other man had a bundle strapped on his back, something like a soldier would have. This man came in and had a roll of blankets. That is all I seen with him. Then I told him "If you want anything to eat, cook it yourselves. I have not got anything here." That man there, he started the fire and cooked something. He opened his bundle and took out some flour and some bacon and, I believe, a little 'east-powder tin with some sugar in it; a little coffee, I believe; he had a little 'east powder. He mixed up some dough, and fried some flapjacks. After he was there eating I told him, "If you fellows want to have a sleep I will give you fellows a couple of my deerskins and put them on the floor and make a shakedown." So we did. They took their blankets apart and laid down and covered themselves with their blankets. That man there, Aston, said "Will I blow out the lamp?" I said "No." They did not blow it out. I laid down on the bed with my clothes on. These two men were lying with their heads to the northwest and I was lying the same way. Finally I thought I would turn around the other way from what theirs was, so that I could see what was going on. They lay down and, I believe, went to sleep, and I did not go to sleep.

When daybreak came, these men was the first to get up. They
418 lighted a fire and started to cook something. We all had something to eat. I started back for my home. During the night, that evening—I am not certain whether it was in the evening or in the morning—he was talking to me about taking them from the island, but I did not give them any satisfaction of any kind. That man offered me his dory and whatever money I wanted, because he said Joe has got a little money and he can pay you whatever money you want, but I did not give any satisfaction. Then in the morning when I started from there that man told me that if they could not get away from there in the dory they would leave it there. I said, "If you leave it here, take it to a location where it will be safe and will not blow away." When I started from there that man went along with me and I told them to come along and I would help them to get the dory off. I helped him to get the dory off. He started back as soon as he got the dory off and I started for home. I got as far as to where the second cabin is. That is where these Marzovic natives was camped with their bydarkies and I had some tea with them.

Q. Now, you state that when Aston came into the cabin, that the defendant remained outside?

A. Yes, sir.

Q. How long did he remain on the outside before coming in, from the time that Aston first knocked at the door?

A. I should say about five or ten minutes.

Q. Did he tell you what his name was?

A. No, sir; I never asked him.

419 Q. What arms did he have when he first came there?

A. I did not see any.

Q. Did you see a rifle?

A. No, sir.

Q. A shot gun?

A. No, sir.

Q. Revolver?

A. No, sir.

Q. You left there the next day; did you see either Hardy or Aston? When did you next see them?

A. The next time I saw them was aboard of the "Manning."

Q. Did Aston, at your cabin that night, tell you about seeing some writing in one of your cabins?

A. Yes, sir.

Q. Was that in the presence that he told it?

A. I do not remember.

Q. Was it in the night?

A. It was in the night or in the morning.

Q. Were you in the cabin?

A. I do not remember.

Q. What is your best recollection?

A. I am not positive whether he was or not.

Q. State what that conversation was.

Mr. SULLIVAN. We object to his answering that question.

The COURT. Objection sustained.

Q. Did you ever see that board before?

A. Yes, sir.

Q. Where did you see it?

420 A. I seen it in the third cabin.

Q. Point out the cabin on this map?

A. Right here.

Q. Right here, above Otter Point?

A. Yes, sir.

Q. About how far was that from this cabin on Shaw Bay?

A. I do not know how many miles.

Q. By the boat, how far?

A. I do not know for sure. By walking it takes me between six and seven hours to walk it.

Q. You walk pretty rapid? How many miles do you walk——

A. I walk between three and three-quarters and four miles an hour. The first two or three hours I can walk four miles an hour.

Q. Did you see the board in the cabin?

A. Yes, sir.

Q. When?

A. I seen it on the first day of July. On the same or rather the day following the day when I left them. I seen them on the night of the 30th of June and the next day, the first of July, I seen that. That night when Aston asked me if I seen any writing in the cabin—he first asked me if seen it. I said "Yes." He said, "Did you not see any writing there?" I said "Yes."

Q. What did you do when you saw that writing there?

A. I went right on towards home.

Q. When did you next see this board?

421 A. I can not exactly say. It was when I went over to get it.

Q. About what time?

A. Some time in July. The second day after the "Manning" left Marzovio.

Q. Was this board a part of the house?

A. Yes, sir; I will show you how it was fixed. Here is the roof of the house and that board fits just like that. Here comes the roof up and the other side of the roof comes the same way—right behind the stove-pipe.

Q. Did you get this board?

A. Yes, sir; I chopped it off with an axe because I did not have any saw.

Q. How long was it before that that you had been to the cabin, where you met Hardy and Aston?

A. It must have been about same time—about the seventeenth of May.

Q. What is your business, Mr. Rosenberg?

A. Hunting and fishing.

Q. Is that part of Unimak Island inhabited or uninhabited?

A. It is not inhabited, except in the winter time, when these people come to hunt.

Q. How about it in June?

A. There is nobody there then. There is the Marzovio party, and about half a dozen other parties. This year there was only two parties there—the Marzovio and the Yakatan party.

Q. Is Unimak Island in the district of Alaska?

A. Certainly it is.

422 Q. Do you know what division?

A. I do not know anything about that.

Mr. McGINN. That is all. Take the witness.

423 Cross-examination:

Q. (By Mr. SULLIVAN.) Mr. Rosenberg, you lived in this cabin, where you met Aston and the defendant, from the seventeenth of May until the time you met them; is that right?

A. Yes, sir.

Q. Did Aston ask you when he arrived there, or while he was there, did he ask you what day of the month it was?

A. I do not remember whether he did or not.

Q. Did you tell him any time that he was there that it was the third of July?

A. I do not remember. I do not think I did.

Q. Your recollection is that it was the night of the thirtieth of June?
A. Yes, sir; I am positively sure about that.
Q. You are positive?
A. Yes, sir.
Q. Did you state whether or not Aston took blankets into the cabin or not?
A. I did not say Aston took them in. I saw that man have a roll around his shoulder.
Q. Did he have blankets strapped on his back?
A. The blankets were right around his shoulder.
Q. He came in the cabin with these on?
A. Yes, sir.
Q. After Aston had called him two or three times?
A. Yes, sir.

424 Q. Do you know whether, on the night prior to the night of the thirtieth of June, there had been any other parties in the cabin who had left some stuff there?

A. I do not.
Q. You do not know whether they had been there or not, anybody?
A. No, sir.
Q. Did Aston want you to take him and the defendant on to the mainland?
A. They made a proposition.
Q. And Aston's offer was to give you the dory and whatever money he could get from Joe?
A. No, sir; he did not say whatever money I could get from Joe. He said, "I will give you the dory, and Joe has got a little money and will pay you."
Q. He offered you the dory, did he?
A. Yes, sir.
Q. Are you positive of that?
A. Yes, sir; I am positive of that.
Q. You say that Aston asked you after retiring, or after going to bed, if he should blow out the light?
A. Yes, sir.
Q. You say that neither Aston nor the defendant had any arms whatever when they came into the cabin?
A. No, sir. I did not see them have any arms of any kind.
Q. The distance between these two cabins that you pointed out on the map—the cabin where this board was and the cabin where you met Aston—it took you at a brisk walk—it would take you between six and seven hours?
A. Yes, sir.
Q. The distance must be about twenty-five miles?
A. About that.

425 Q. After the 30th of June, or early next morning, you never saw Aston any more until he was aboard the "Manning?"

A. No, sir.
Q. Mr. Rosenberg, you stated a while ago that you did not know whether or not there had been any parties in the cabin prior to the time that you arrived there on the night of the 30th of June, and no one at that time informed you that parties had been there.

A. Not about that cabin.
Q. What cabin?
A. The cabin where the writing was.
Q. What was that? To the effect that there had been three parties there?
Mr. McGinn. We object to the question as leading.
The Court. Objection sustained.
Q. What time on June 30th did you arrive at this cabin?
A. June 30th.
Q. This is where you met Aston?
A. That must have been about six or seven o'clock in the evening.
Q. Do you recollect what time you left next morning?
A. I do not.
Q. Was it late in the morning or early?
A. It must have been about between six and seven o'clock in the morning. It was after daylight.
Mr. Sullivan. That is all.
(Examination of Mr. Rosenberg closed.)

426 Mr. J. O'Sullivan, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:
Q. (By Mr. McGinn.) What is your name?
A. James O'Sullivan.
Q. Where do you reside?
A. In Unalaska.
Q. How long have you resided here?
A. Off and on since last February a year ago.
Q. Do you know Fred Hardy?
A. I know a man who is called Hardy.
Q. Do you know George Aston?
A. I know him by that name.
Q. When did you first see them?
A. At Dora Harbor.
Q. About what time?
A. I do not know the dates or the day when I left the "Manning." The same day that I left the "Manning;" the afternoon of the day when I left the "Manning."
Q. What was that?
A. I do not remember.
Q. What month?
A. It was in August—no, it was in July.
Q. What part of the month of July?
A. It must have been about the 23rd. My birthday was on the 21st, and it was two or three days after that day.
Q. Did you see Hardy and Aston at Dora Harbor?
A. Yes, sir.
Q. State to the jury under what circumstances you saw them there, and what, if anything, you did.
427 A. That morning we left the "Manning;" Benson, the gunner, myself, and there was an officer in charge of the boat, and three or four sailors. We went down the bay about three miles and put to

shore. We talked a little and then went down the beach. We came to a river and crossed the river and came to a Government station; I believe they were surveyors. We stayed there a few minutes, Benson and I, and struck on down the beach. We sat down and waited for the gunner, who had met a friend and stayed a little while talking to him. We then proceeded down the beach until we came to this village; Mr. Benson was acting as guide. On the way down Benson stated that he would take me to the hill and show me the place. We got down to Dora Harbor and when we got to the door of the lodging house I met there a party of men. I went to the closet and seen a man sitting there.

Q. Before you went to the closet where did you go?

A. I went to the door of the lodging house.

Q. What did you do there?

A. I stayed there for a few minutes.

Q. What doing?

A. Waiting until Benson pointed the man out to me.

Q. Did you go inside?

A. At that time, no.

Q. Then what did you do?

A. Went to the closet.

Q. What kind of a closet.

A. Water-closet.

428 Q. How far was this from the house?

A. I should judge in the neighborhood of sixty or seventy-five feet. I glanced in and saw a man sitting there; I turned my back.

Q. Who was the man that you saw sitting there?

A. That man there, Hardy. I turned my back for a few seconds and then looked around. I watched him closely. We spoke a few words to each other. I never took my eyes off him. I noticed he did the same to me. He did not seem to have any call of nature. I started to go towards him once, then I stopped; I thought he might drop something. I told him I was pretty hungry and he told me I had better go and get something to eat. He said, "What do you want?" I said, "I want you." I remained standing there for some time and he started to wipe himself with his right hand. He had what looked to me like a piece of paper about that long and half as thick as my finger. He made a pretense of wiping himself and let it drop. With the left hand he seemed to be working at this pocket all the time; then he would scratch his leg so that I could hear him. He also had a piece of rag and pretended to wipe himself with that. He then dropped it down.

Q. Where did he drop it to?

A. To a projection of earth. He then got up and came with me close to the door of the sleeping apartments. I then called the gunner over and I told him to put the irons on that man.

Q. Where was Aston then?

A. Aston I found afterwards in the room. About that time

429 there was a man going into the water-closet. I told him not to go in there until I had done with it. I went into the room and asked a fellow where the partner of this man was. He said, "That is the man."

Q. Who did he point to?

A. To Mr. Aston; I told him to come with me and he got right up and came. The gunner put the handirons on him. Then I started to search Hardy. On Hardy I found some Mexican or Spanish coins, I believe they were; a small flat nugget about as big as my finger nail, a little irregular; a round sack about that long, doubled up about that shape, and a piece of buckskin that was attached to the sack for tying it up. I do not remember of any other articles of importance that I found on him at that time. I then searched Aston, and found a gold watch, or apparently gold, with a chain; fifty cents in silver; some tobacco, I believe, and an old knife; I am not sure about that.

Q. I will ask you to examine this watch, and state whether or not you have seen it before (plaintiff's Exhibit J); I will show you both watches (plaintiff's Exhibits J and I).

A. Yes; that is the watch I got from Aston (plaintiff's Exhibit J); that is the watch that I found in the closet together with the sack (plaintiff's Exhibit I); I then went over to the closet.

Q. You say you searched Aston and found what?

A. I found, I think, fifty cents in silver, that watch and some
430 tobacco, and I believe an old knife. I am not sure about the knife.

Q. Then what did you do?

A. Went over to the closet and examined the place where I seen him; examined this piece of rag, and the closet had a hole about possibly four and a half feet; it was a new closet, apparently; the house was built over the hole, say probably two feet or so larger than the hole; that left a projection of earth sticking out from the side of the house to the side of the hole; there was the rag; I picked it up and looked at it; there was nothing on it; I opened it, and there was the pin Owen Jackson told me he had lost.

And thereupon the court declared a recess of five minutes.

All present, proceedings resumed pursuant to recess.

Q. (By Mr. McGinn.) Just state what you found in the closet when you went there.

A. I looked in there and saw there this rag. I picked it up and opened it and found the pin inside, wrapped up in the rag.

Q. I ask you to examine this plaintiff's Exhibit H, and state whether or not this is the pin you found there at that time.

A. Yes, sir; that is the pin.

Q. How are you able to identify that pin?

A. Because after I got that pin up and put it aboard the "Manning" it was put under lock and key and at the preliminary hearing I marked it with a file. It is made of what you find in coal mines.

431 Q. What else did you find?

A. I looked down and saw a watch in a sack; I came out and got a stick with a big hook attached to it that was on the wharf; I came back and hooked up the watch and the little sack; they were both separate; then I worked there quite a little while probing around; I got sick and came out.

Q. The watch that you found there is this watch that you identified some time ago as plaintiff's Exhibit I?

A. Yes, sir; that is the watch that I found in the closet. I then came up to the house, and went into the house and examined the bunks—Hardy's bunk; the bunk the fishermen told me Hardy slept in, and I found a little sack.

Mr. SULLIVAN. I object to this testimony as irrelevant and immaterial and hearsay.

The COURT. Objection will be sustained.

Q. Just state where this bunk was that you went to.

A. It was on the left-hand side as you go in.

Q. Was there more than one tier of bunks?

A. Yes, sir.

Q. How many tiers were there?

A. There on the right-hand side there were two, one above the other; two on this side, and two there on the end of these, and two over on the other side of the door; I went direct to this bunk that I was directed to.

Q. Which way does the door of that cabin face that you went to?

A. I do not know how it faces; I am not much of a hand for the points of the compass.

Q. Take this pencil and paper and show how and where the
432 bunk was located in this cabin, if you can, showing the door of the cabin?

A. As near as I can tell it to you, here is the road that comes down the trail, this way; here is the door on this side of the cabin; here is the sea over here; there is a door in the cabin that faces this way; we came down the trail this way; there is a closet there; here is one door of the cabin, and here is the other door; this particular bunk here is where I stated Hardy's bed was.

Q. On what side of the cabin as you go in?

A. On the left-hand side of the cabin as you go in. This bunk across over here is the place where Aston slept, or was supposed to.

Q. What did you find in that bunk?

Mr. SULLIVAN. We object on the ground that it is immaterial and irrelevant.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

A. The first thing I came across was a lot of different articles of clothing that the fishermen claimed was theirs; and in turning over some of the articles there I found, right again the wall, in the bunk, but on the right-hand side as a man would lay, a pistol in a scabbard.

Q. What was the size of that pistol that you found there?

A. I afterwards examined it and found that it was a 41.

Q. I will ask you to examine plaintiff's Exhibit E and plain-
433 tiff's Exhibit D, and state whether or not that is the scabbard and revolver that you found in that bunk on that day?

A. That is the one.

Q. How are you able to identify that?

A. I identify that by this here and by the general look of it (plaintiff's Exhibit E). I identify this by the general look of the pistol and by this mark that I put on it as soon as it was taken out of my hands and showed to the court.

Q. What else did you find there?

A. A little white sack, and a lot of razors and knives, and some books, and a lot of small articles—a map, I believe, and a lot of stuff.

Q. Examine plaintiff's Exhibit FF, and state if that is the one.

A. Yes; that is the one.

Q. I will ask you to examine the contents of plaintiff's Exhibit FF, and state whether or not any of this stuff is the same as was in the bag when you found it at Dora Harbor.

A. Yes, sir. There ought to be another razor. I recognize these razors and other plunder, except one; this stone; these hair clippers—and there is another stone besides this. Generally speaking, I identify all this stuff.

Q. You will examine this other razor, and state whether or not it is the same.

A. It looks like it.

Q. Examine plaintiff's Exhibit BB, and state whether or not you saw that razor there at that time.

A. Yes, sir.

Q. How do you identify it?

434 A. It was much smaller than the others, and had the same kind of grease on it.

Q. Did you find any old pencils there at that time?

A. Yes, sir; it looks like these pencils. There was a lot of pencils.

Q. Examine those.

A. Yes, sir. Those are a pair of pincers. There was some more knives there; he had a pretty old one and kind of a whitish handle. That is about all in this that I think I found.

Q. What, if anything, else did you find there?

A. There was some books—some old books—some kind of little books.

Q. Some books?

A. Yes; a kind of map in a pocket form—a book form.

Q. Examine these books, and state whether or not they are the ones you saw.

A. Yes, sir; this looks like the ones I saw. It strikes me there was another one, too.

Q. Examine that book and state whether that is one of them.

A. Yes, sir; that is one of them—a dictionary of that kind. It did not have any mark on it—was together with those here.

Q. Did you find anything else there, Mr. Sullivan?

A. I do not remember. That is about all the articles I remember finding there. There may be more, which I think there is—small articles that I did not pay much attention to as I put them in a small sack. I went to Aston's bunk and found a blanket there. I do

435 not remember whether the bunk was single or double. I do not remember getting anything else at present out of Aston's bunk; there was hardly anything in his bunk.

Q. Did you make a search of the defendant?

A. Yes; and that was afterwards.

Q. After searching the bunk?

A. No; that was before.

Q. What did you find on him; what, if anything, did you find on his person?

A. Well, I found some Spanish money, and I remember a flat nugget, about pretty near as big as my thumb nail; I believe it was a little jagged on the edges like. I found a brown sack, and possibly a jackknife. That is about the substance of it.

Q. I ask you to examine this, plaintiff's Exhibit C, and state whether or not that was the bag that you found on the person of Hardy, on or about the 23d of July, at Dora Harbor.

A. Yes, sir; I believe that is the sack. It was done up in a different manner from that.

Q. Did you examine the contents of that sack?

A. Afterwards.

Q. What did you find it contained?

A. Money.

Q. What kind of money was it?

A. It was bills.

Q. What kind of bills?

A. It looked to me like twenties and tens.

Q. Do you know the amount?

A. I did not know the amount at the time.

436 Q. Did you find out subsequently?

A. Yes, sir.

Q. What was the amount?

A. Five hundred dollars.

Q. Did you count the money yourself?

A. No, sir.

Q. Who did count it?

A. The judge.

Q. Were you present at the time?

A. Yes, sir; he counted it twice.

Q. Are you positive that the amount is five hundred dollars?

A. Well, I think the amount is five hundred dollars, because by the amount that I got from Gaffney and the amount I found on Hardy afterwards and the amount the judge and I both counted, it must be five hundred dollars.

Q. I wish you would tie that bag, as near as possible, in the manner in which it was tied when you took it from the person of the defendant.

A. I do not know what kind of a knot was on it, but here is the position of the bag; it was something like that; that is as near as I can get it.

Mr. SULLIVAN (to counsel). Have you any objections to its being counted?

Mr. MCGINN. No, sir.

Q. Examine these greenbacks, and state whether or not they answer the description of the greenbacks you found on the defendant Hardy at Dora Harbor, on or about the 23d of July, 1901.

A. I can not tell the money, but I would say it was the money,

437 being as it was in the sack, but it was the same denominations of bills.

Q. Did you find anything else on the person of the defendant besides what you have stated?

A. I do not remember.

Q. What did you do with this property that you found there?

A. After we got our supper we came to the camp; the next morning a small boat came over from the "Manning" and the prisoners and myself and guards went aboard. I took what evidence I had and the money and turned it over to the judge. The judge immediately went down in the cabin with the captain and counted the money there—twice, possibly three times—but I know twice before me.

Q. To whom did you turn over the possession of this property?

A. To the judge—Judge Whipple.

Q. To whom did you turn over possession of this property?

A. Judge Whipple. There was altogether—I got sixty-five dollars from Gaffney.

Q. What was that for?

A. Money that Mr. Gaffney had taken from Mr. Hardy. Hardy had given him for a dory that he had issued to Mr. Hardy. Going along the road after we had left Dora Harbor, Benson dropped back and told me that he had seen Hardy turn his eyes over to me and he had dropped his eyes and pretended not to see him, and made a motion towards his hat——

Mr. SULLIVAN. We object to that testimony.

The COURT. Objection will be sustained.

I stopped the train and immediately went over to Hardy and found twenty dollars in his hat—two ten-dollar bills.

438 Q. That made how much?

A. That made five hundred and eighty-five dollars. Then I had thirteen dollars and twenty-five cents that I had gotten from Gaffney, of moneys that were due Hardy and Aston. There was seven dollars and nineteen cents of that due Hardy and six dollars and sixteen cents due Aston.

Q. What did you do with that money?

A. Turned it over to Mr. Whipple.

Q. This canvas sack that you found—what did you do with that?

A. It was taken and placed in a bundle. The bundle was—there was a blanket, or there appeared to be a double blanket cut in two, and all the small articles placed in it and placed in the locker of the first lieutenant aboard the "Manning."

Q. Who retained possession of the key to the locker?

A. I did.

Q. Did you have possession of that key during all the time you were aboard the "Manning?"

A. Yes, sir.

Q. That was done at whose suggestion?

A. I believe the first lieutenant. He told me that I had better keep the key in my possession until such time as we got home.

Q. Have you ever been at Cape Lapin, Mr. Sullivan?

A. Yes, sir.

Q. When were you there?

A. I was there, I think I was there on the twenty-second day of July, because the day before was my birthday.

Q. Who accompanied you on that trip, if anybody?

A. There was the doctor on board the "Manning," Judge
439 Whipple, the coroner's jury, myself, Owen Jackson, and I believe that was all.

Q. Wnat did you do when you went there?

A. We got the bones of Rooney and buried them; and we dug up the bones supposed to be the bones of the Sullivan boys, and dug the grave deeper and buried them all together—the remains of the three; and then we went around searching for evidence. We got to the cabin there, and the cabin was broken down. It seemed to have been recently broken down.

Q. Examine this map of that country and state whether or not it correctly gives the position of the coast along there—of the creek and of the Barabara.

A. Well, I came up the creek here, and I—somewhere along here—I crossed the creek and came over and looked around. I was monkeying around somewhere in here. Then I struck on down and crossed the creek and went over this way and seen a Barabara. It was right here. The door of the Barabara was facing the bay here and the roof was broken in. It looked like it had not been broken in long. I looked in and seen a three-quarter mattress there, apparently new. It was covered with dirt, and I pulled it up and did not find anything. I left the Barabara and crossed the creek, a very small one. I came across like this, and there is a little knoll here. I went up there like this, and came on to the point of the hill overlooking the bay. This side is the opposite of the hill facing the bay. This is all sand-like. We came up here, I think, Lincoln Wahn, George King, and myself.

440 Q. What, if anything, did you find there?

A. We found seven empty cartridges on the brow of the hill, in a very small space.

Q. Within a radius of what space did you find these cartridges?

A. Well, within a radius of about not quite as large as this platform.

Q. You say that where you found these cartridges was right on the brow of the hill overlooking the creek?

A. Overlooking the bay and overlooking everything. The most prominent point on the hill. It commanded the beach both ways.

Q. State as nearly as you can on that map, where the position was that you found those cartridges.

A. This is the sand bank. In my judgment, it is right in here somewhere. I would not say for certain.

Q What kind of cartridges were they that you found there?

A. They were 30–30.

Q. You say you found seven?

A. Yes, sir. Well, Lincoln and I found most of them, and George found one or two. George went over to the rock where Hugh McGlachin was.

Q. How far was that from this place?

A. In my judgment, it was about fifty yards.

Q. In what direction?

A. Right across like that.

Q. Did you examine these cartridges?

A. Yes, sir.

Q. What were they?

441 A. "U. M. C."

Q. Examine those cartridges and state whether or not they are the cartridges that you found at the place that you indicated on the chart.

A. Yes, sir; the cartridges are the very same.

Q. What else, if anything, did you find there?

A. Well, I brought down with me an old—what was part of the vertebrae of a whale.

Q. Did you find any clothing or provisions?

A. I seen one particle of clothing, an old shirt on a rock. I found that was the only thing I saw there.

Q. From Cape Lapin where did you go? Did you go to Dora Harbor?

A. No, sir.

Q. Where did you go?

A. Down back to Coroner's Cove.

Q. Then where did you go?

A. On the "Manning."

Q. Do you know where this cache is that you speak of?

A. Yes, sir.

Q. Where is it?

A. Between Cape Lapin and Coroner's Cove.

Q. How far?

A. About three miles.

Q. In what direction?

A. In my opinion, it is to the eastward. I do not know much about the compass.

Q. Mr. Sullivan, this being the map of Unimak Island, that

442 being Unimak Pass, this direction being north, this south, this east; this being Cape Lapin. State as nearly as you can where that cache that you speak of is located.

A. This way.

Q. About how many miles?

A. About three miles down this way.

Q. What did you find at the cache?

A. The first thing I landed on the beach, before we got to the beach, I saw a kind of cave in the rocks. It had been washed out by the elements. There was a big rock standing almost by itself—it must have been broken off from the main rock—which formed a little entry; then to the right-hand side there was a little place like where the sea had washed out, and inside was a little cache. It strikes me that it was covered over with a piece of canvas. In there we found some grub. The first thing I seen was a lot of matches scattered around there. There was some in a tin can; a sack of flour, a case of Irish stew, a round canteen of tea. Some of the boys found a single can of meat way down in under a hole in this rock. I saw a corner of a box in the rocks like—to the left of the cache, and I moved the rocks away from it and pulled it out, and I think it was a box of candles and some miscellaneous articles. There was a big slope which came down from the side of the hill here like, and I kept looking around and commenced to find sacks

and bags that had been shoved down in holes in this slide and plastered all over with small rocks. We found three sacks and some small boxes in these holes in this slide.

443 Q. What kind of sacks were they?

A. They were big round miners or Yukon sacks that was three or four feet high.

Q. Did you examine the sacks and see whether there were any names on them?

A. I believe I did examine one or two, but I do not believe it was Rooney's, Sullivan's, or Jackson's; I believe it was another name.

Q. I will ask you to examine these sacks, marked "Plaintiff's Exhibit HH," "Plaintiff's Exhibit GG," and "Plaintiff's Exhibit II," and state whether or not in your opinion they are the same sacks you saw there at that time.

A. Yes, sir; those sacks look like the sacks. This sack I know.

Q. Did you examine the contents of those sacks?

A. Not at that time.

Q. Did you subsequently?

A. Yes, sir; I believe we examined one or two when we were putting them in the boat at Coroner's Cove.

Q. You state that you found some boxes in this cache?

A. Yes, sir.

Q. Did these boxes have any name?

A. Well, I saw the Sullivan Brothers on them; whether it was Sullivan and Jackson, I can not say. One box is all I seen the name on.

Q. When you examined this bag in the boat at Coroner's Cove, what did you find in it?

A. It strikes me that I seen a little gray coat; I think I seen
444 a blanket; I am not sure about the blanket. It strikes me I seen a candlestick there.

Q. What kind of a candlestick?

A. A miner's candlestick.

Q. A plain, ordinary candlestick?

A. No, sir; I have used them for twenty years and never seen one like that before.

Q. I will ask you to examine that candlestick, plaintiff's Exhibit F, and state whether or not it is the one you saw there at that time.

A. Yes, sir; that is the candlestick. I believe that I made the remark at the time that I would like to own it.

Q. Where did you find this candlestick?

A. In a sack.

Q. The sack you had taken from this cache?

A. Yes, sir.

Q. What, if anything, else do you remember seeing in the sack at the time?

A. I do not remember; Jackson said this was Rooney's.

Q. What did you do with the other sacks?

A. We put all of them aboard the "Manning" and brought them to Unalaska.

Q. Did you examine the contents of these bags when you put them aboard the "Manning?"

A. I do not think we did.

Q. Did you when you arrived at Unalaska?

A. The only time that I remember examining these sacks was at the preliminary hearing. It is possible that we examined them before,
445 but I hardly believe it, because they were always under lock and key.

Q. Where were these sacks taken from aboard the "Manning?"

A. To the jail.

Q. They were placed under lock and key?

A. Yes, sir.

Q. Who held the key?

A. I held it all the time.

Q. You say that you made an examination of these bags at the preliminary hearing?

A. Yes, sir.

Q. Did you see at that time what these bags contained?

A. Yes, sir.

Q. State the nature of the goods, clothing, and provisions that were in these bags.

A. They contained underclothing, socks, overcoats, blankets, and some of the stuff that I got at Dora Harbor, and a robe that Jackson claimed.

Q. I will ask you to examine these, this robe, and state whether or not that is the one you saw in the bag?

A. Yes, sir; that is the robe that Jackson claimed.

Q. Did you find any overcoats?

A. Yes, sir; I believe there were two. One was a big ulster marked "Butte, Montana," and the other was a kind of a drab, if I am not mistaken.

Q. I will ask you to examine this overcoat and state whether or not that is one of the overcoats.

A. Yes, sir; that is the one.

Q. The preliminary examination was held before the commis-
446 sioner at Unalaska?

A. Yes, sir.

Q. Examine that coat and state whether it is the one you saw at the time.

A. Yes, sir; it is.

Q. What enables you to identify the black coat?

A. Because it is marked "Butte, Montana," and I took notice of it being a well-made coat, and made for a tall man.

Q. Did you see any blankets?

A. Yes, sir.

Q. What kind?

A. A big extra heavy double gray blanket, and there was a red one, and there was another one that was cut—a white blanket.

Q. Examine these blankets and state whether or not they are the blankets that you saw at the preliminary examination?

A. Yes, sir; they are the ones.

Q. You say you saw some red blankets there also?

A. Yes, sir.

Q. Examine those blankets marked Plaintiff's Exhibit E, and state whether or not they are the blankets?

A. They are an exact counterpart of the blankets that I saw. There was another pair of dirty white ones.

Q. Did you find a comforter there?

A. I believe there was a kind of old cotton comforter.

Q. Is this the comforter you had reference to?

A. Yes, sir; I did not take particular notice of it.

Q. What else did you find in the bag?

A. A white blanket.

447 Q. Examine that blanket and state whether or not that is the one.

A. That looks like it.

Q. What other clothing?

A. There was some underclothing. There was a small suit of clothes; the coat and pants were of the same kind.

Q. Do you remember the color?

A. Well, they were a kind of gray, I think. I could not tell you the color exactly.

Q. Is that the suit of clothes you had reference to?

A. Yes, sir; that is the coat I saw at Coroners Cove. This is the small suit I had reference to.

Q. State generally what other stuff you saw at the preliminary examination.

A. There was some underclothes there and some socks claimed by Jackson, some that were claimed to belong to Con Sullivan, some shoes, one overshoe, a good pair of shoes, and then there was some rough shoes and articles of that kind.

Q. Are these the shoes you saw there?

A. Yes, sir; that is the good pair I had reference to. There was a pair like those.

Q. Did you see any shoes like that there?

A. Yes, sir; I saw one or more pair of those. I believe one pair Jackson claimed—maybe two pair.

Q. Did you find any rubber boots in the bag?

A. Yes, sir; there was about two or three pair. There was more than one pair.

Q. Did any of these rubber boots have any mark on them?

A. Yes; I think there was one pair there that Jackson claimed

448 was his, because he knew. Yes; I believe there is one boot there.

Q. What was there about that boot that would cause you to remember it?

A. There was a hole in the leg of it; was tore or something.

Q. Do you think you would remember that boot if you saw it?

A. I think I would.

Q. Examine that boot and state whether or not that is the boot that you found in one of these bags, and was at the preliminary examination.

A. Yes; I saw that boot all right; that looks like it. Yes, sir; that looks like the boot, because it had a hole in the leg like this—up here on the left side. That is the boot.

Q. Did you see any slickers at the preliminary examination?

A. Yes, sir; there was two or three black ones.

Q. Did they correspond to this?

A. Yes, sir; they were black slickers.

Q. Do you remember, Mr. Sullivan, to have opened one of these bags aboard the "Manning?"

A. It strikes me that there was a sack opened, but I can not remember.

Q. Do you remember whether there was talk about a pair being missing, a pair of blankets?

A. No; I do not remember it.

Q. Mr. Sullivan, is the property, the clothing and the provisions, all the clothing, bedding, and wearing apparel that you saw at the commissioner's court of the Dutch Harbor district, at the preliminary examination of this case, the same that you saw at this cache on the Behr-
449 ing Sea side of Unimak Island, near Cape Lapin?

A. Yes, sir.

Q. I will ask you whether the property that you have examined here to-day is the same property that you saw at the preliminary examination?

A. Yes, sir.

Mr. McGINN. I will ask to be allowed to introduce this five hundred and eighty-five dollars in evidence, enclosed in an envelope.

Mr. SULLIVAN. We object to that on the ground that it is immaterial and irrelevant, and on the ground that there was no testimony offered to identify the money; and, 2nd, upon the ground, if the court please, that the testimony of the witness disclosed that the inside of the bag which they introduced in evidence witness had testified contained five hundred dollars and that other money taken from the defendant, in silver—some little, I believe—and some sixty or sixty-five dollars, was was put into this purse—paid to him by someone else, not taken from the defendant. Some fourteen dollars and fifty cents, or similar amount, was money which was due Aston and Hardy for fishing, I believe, or for some purpose there at Dora Harbor, and that was put in here in the shape of currency. I think that covers the objection.

The COURT. Objection will be sustained.

Q. You stated, Mr. Sullivan, that you found, or that Mr. McGlachin found, one of the cartridges; where was that that he picked it up? Indicate it on the map.

A. I can not tell you. I did not see him pick it up. I was
450 too far away. All I know is what he told me. He handed me the cartridge.

Q. To whom did you give that cartridge?

A. I think I gave it—I gave nine cartridges to Judge Whipple—those we found at the cache and those we found at the point.

Mr. McGINN. That is all; take the witness.

451 Cross-examination:

Q. (By Mr. SULLIVAN.) Mr. Sullivan, you say you discovered one box with the name of Sullivan or "Sullivan and Jackson" on it. Is that box here?

A. No, sir.

Q. What did you do with it?

A. I believe Owen Jackson got that box. I took it down to the cache; I took the box from the cache down to Coroners Cove, and it was put on the "Manning."

Q. Have you seen it since?

A. I do not believe I did.

Q. What did you say that you found on the person of the defendant at the time that you arrested him?

A. I found that sack and a piece of gold; a small piece of nugget, I believe, about that big—it was kind of irregular on the edges; I call it a nugget—and some Spanish or Filipino money.

Q. How much Spanish or Filipino money?

A. I can not tell; I never counted it—probably six or seven pieces.

Q. Silver money, was it?

A. Yes, sir; silver.

Q. You found a bag, a small nugget, and some small pieces of Filipino money; was there anything else on his person?

A. I found them, a jackknife and several small articles; but those were the main things I found.

Q. This bag with the miscellaneous articles, did you find that
452 on his person?

A. No, sir; I found that in the bunk.

Q. You found in the closet this watch and the pin?

A. Yes, sir; and a little sack.

Q. That is all you found in the closet?

A. Yes, sir. The watch, pin, rag that accompanied the pin, that the pin was rolled up in; a little rag.

Q. Did the sack have anything in it?

A. No, sir.

Q. Did not the defendant ask you to count this money when you took it from his person?

A. No, sir.

Q. Did he not tell you that it was six hundred and eighty-five dollars that he had?

A. No, sir.

Q. Did you not tell him, in fact, that it was none of his business; that you would look after that?

A. No, sir.

Q. Did not he demand a receipt from you for the money that you took from his person?

A. No, sir; I will say this much: I said, "Is this money?" He said, "Yes, I earned that money." I said, "This money will be turned over to you at the proper time; I will take care of it."

Q. Did he not demand a receipt from you?

A. No, sir.

Q. Did not the defendant demand a receipt from you for the
453 money which you took from his person, in the presence of Mr. Gaffney?

A. No, sir.

Q. Did the defendant not ask you to count the money in the presence of Mr. Gaffney?

A. No, sir; positively. No, sir! There was not a word said about counting the money.

Q. Now, you got your sixty-five dollars, was it, from Gaffney?

A. Yes, sir.

Q. That was put into this sack?

A. I can not swear to that.

Q. When did you first count this money?
A. The first time I counted the money was with the judge.
Q. At Unalaska?
A. No, sir.
Q. At what place?
A. On board the "Manning," in the cabin.
Q. At Unimak Island?
A. I do not know whether she was underway or not.
Q. How long after you got the money did you see Judge Whipple?
A. I got the money in the evening, possibly about four o'clock; I never seen Judge Whipple until the next day, in the morning, when we went aboard the "Manning."
Q. And that is the first time you counted the money?
A. Yes, sir.
Q. You had the money in your possession during all that time?
A. Yes, sir,
Q. Did you put the money in this bag at the time that it was counted?
454 A. I did not have anything to do with that.
Q. Did the judge do it?
A. Yes, sir.
Q. Was it placed in the bag or was it put in an envelope?
A. I think the money was placed in the bag. I am not sure.
Q. Now, you are positive that you did not count the money or examine it at any time before you counted it in the presence of Judge Whipple?
A. What was that question?
Q. Did you examine the money after you took it from the person of the defendant, or count it at any time before you met Judge Whipple?
A. Yes, sir.
Q. Where were you then?
A. Right at Dora Harbor, at the door of the eating house.
Q. Was it after you got this money from Gaffney?
A. I do not think it was.
Q. What other money did you get besides from Gaffney?
A. I think it was thirteen dollars and twenty-five cents.
Q. Where did that come from?
A. Gaffney.
Q. That came from Gaffney?
A. Yes, sir.
Q. What was that for?
A. For labor performed by Hardy and Aston.
Q. Now, the total besides all this little money was five hundred and eighty-five dollars?
455 A. Yes, sir; and thirteen dollars and twenty-five cents that I got from Gaffney, and fifty cents that I got from Aston, and possibly fifty cents in silver that I got from Hardy. I got the sack. Sixty-five dollars from Gaffney; I found twenty dollars in his hat on the way, and thirteen dollars and twenty-five cents which I received from Gaffney for labor. I think I gave Gaffney a receipt for all the money.
Q. You found five hundred dollars in the purse?
A. I did not see what was in the purse.

Q. That five hundred and eighty-five dollars was taken in currency and rolled up and preserved, was it not?

A. I do not know; I did not particularly notice the money; I know Judge Whipple counted it at the time, and I do not know what he did with it.

Q. You speak of examining or counting this money once after taking it from the defendant, before going on the boat.

A. Yes, sir.

Q. Did you count any part of the money then?

A. I do not think that I counted more than forty or fifty dollars—I did not count the money; no, sir.

Q. Did you start in to count it?

A. Yes, sir.

Q. How much of it?

A. Probably up to sixty dollars.

Q. After you opened the purse and took the money out and then counted up to about sixty dollars, and ceased to count any more, did you put the money back in the purse?

456 A. Yes, sir.

Q. This stuff you testified to as having before the preliminary examination, you got that at the time that you went up on the "Manning" and arrested Hardy, is that right?

A. I got it before.

Q. You got it before the arrest?

A. Yes, sir.

Q. Did you hear Aston's testimony in regard to the arrest, in the court room?

A. In regard to the arrest? Yes; I believe I did hear some portion of it. I heard him state he was arrested at Dora Harbor by me.

Q. Are you positive that Hardy was first arrested?

A. Yes, sir.

Q. Is it not a fact that Aston was arrested by some of your party before Hardy was arrested? By the gunner of the "Manning?"

A. No, sir.

Q. Did not some one from the "Manning" arrest Aston before you arrested Hardy—the gunner or somebody?

A. No, sir.

Q. You say you found one of these watches on Aston's person?

A. Yes, sir.

Mr. SULLIVAN. That is all.

Mr. MCGINN. That is all.

(Testimony of Mr. O'Sullivan closed.)

457 Mr. R. H. WHIPPLE, a witness produced on behalf of the Government, having been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) What is your name?

A. R. H. Whipple.

Q. Where do you reside?

A. Unalaska.

Q. What official position, if any, do you occupy?

A. United States commissioner for the precinct of Dutch Harbor.

Q. How long have you been acting as such?
A. Since the seventh of September, 1900.
Q. Are you acquainted with the defendant, Hardy?
A. I am.
Q. Are you acquainted with George Aston?
A. I am.
Q. Have you ever been on Unimak Island?
A. I have.
Q. When were you there?
A. I landed on Unimak Island on the evening of the 20th of July, about 6 o'clock.
Q. On what part of the island?
A. At a place known as Shaw Bay, or Coroners Cove.
Q. On what side of the island is that?
A. It is on the northeast side of the island; perhaps it might be west; I am not sure as to the direction.
Q. State to the jury what you did when you got there.
A. We arrived there on the evening of the twentieth of July. I went there for the purpose of holding a coroner's inquest over the bodies
458 of Con Sullivan, Florence Sullivan, and P. J. Rooney, who had been reported as killed by one Owen Jackson. I had with me a coroner's jury; Mr. Sullivan, who was acting as special deputy marshal; Dr. Weeks, of the "Manning;" Owen Jackson, and myself. We came to Coroners Cove that evening. The next morning very early we started for the place where the killing was reported to have been done, some ten miles to the southward, as nearly as I can guess. We went there and found a newly made grave, which had been burrowed into by the foxes, and we could see the bodies protruding. I ordered that they be disinterred; the bodies were taken up and laid on the grass. They were identified as the bodies of the Sullivans by Mr. Jackson. Then I ordered that they go in search of the body of Rooney. Led by Mr. Jackson, we went down to the water's edge and along the other shore to where he said he last saw Rooney alive. There we found the skeleton of a man whom we took to be that of Rooney, but the body was in such a condition that it could not be taken whole, and we put it in three boxes and carried it back to those of Florence and Con Sullivan. We held inquests over the bodies. I ordered that new graves be dug.

Mr. SULLIVAN. We object to that as immaterial.

(No ruling.)

We buried the bodies and returned to camp. We then started in search of the goods. On the way back to camp, one Fred Williamson, one of the jurors, took a different route from the rest of us and got into camp late that evening. I then sent a note to the captain of the "Manning,"
459 that was lying in the harbor, to send me a boat with some men, which he did. I sent Deputy Marshal Sullivan, with the men that were in the boat, from the "Manning" to go to a cave which had been represented to me as containing some goods. They returned with some sacks of goods, a boat load practically, and then I directed that a further search be made next morning, and I asked the captain of the "Manning" to give me two boats in the morning; I think he gave me one, however, and sent them direct from the boat to the cache. We

spent the afternoon in searching about the cache and examining it, and the adjacent rocks, where we found the lost stuff. We then returned to camp and the captain sent word that it was likely to be stormy and asked me to come aboard, which I did. I then requested the captain of the "Manning" to take me to Marzovio. After some consideration he consented to do so. There I asked the captain to send off some boats with some men, which he did by placing the boats in the hands of some lieutenant. I think there were two boats and the deputy marshal was with the crew; we came back with four prisoners next morning. They were natives. Then I requested the captain of the "Manning" to send some boys after one Brown Benson.

Mr. SULLIVAN. We object to that testimony.

The COURT. Objection sustained.

Q. While you were at Cape Lapin, Judge Whipple, what, if anything did you find?

A. I found the bodies of Con and Florence Sullivan and P. J. Rooney.

460 Q. Did you see any provisions there?

A. I did.

Q. What kind?

A. I saw sacks of flour and I think a box or two of canned goods partly buried in the sand.

Q. Did you see any marks on any of the goods?

A. Yes, sir; the flour in the sacks were marked "Sullivan & Jackson."

Q. What, if anything else, did you find there?

A. There were some shells. I was not very close to the parties; I started out with them, but they were too fast for me and kept up on the side of the hill; they got there before I did. They picked up something and came back and handed me some shells.

Q. You don't know where they picked them up?

A. Yes, sir; I saw them pick up something and come and told me they were picking up shells.

Q. Examine this chart and state where it was you saw them pick up the shells?

A. Right here is where a portion of the shells were picked up, this sand. Right here there were some shells picked up at this point; right here, if I understand this map correctly, and here. This is the sand bank and this is the gradual slope; this is a high point. This point stands out very prominent and I should judge is perhaps one hundred and fifty or two hundred feet or perhaps three hundred feet from the mouth of the creek, and I should judge the elevation is per-

461 haps two hundred and fifty feet; I am guessing at that. This point is a little bay also. This point commands the mouth of the creek and the beach around to this point; that also commands the promontory as it were. This point up here is on top; it is about where I saw them pick up cartridges, here; also Jackson was at this point and he picked up something and it was given to me as a cartridge. Mr. Sullivan gave me a cartridge that had been picked up there.

Q. Did you find anything else there?

A. I do not remember anything else at that point.

Q. Were you at the cache?

A. I was.

Q. What did you see there?

A. I saw a portion of what I took to be a red boat; one end had been chopped with an axe and the other seemed to have been torn out; I saw a small mast tied with some fishing gear; I also saw quite a bundle of old clothing that was buried under a rock and other things lying about the cache.

Q. How many bags of clothing did you see?

A. I did not see any bags of clothing at the cache, because they had been brought in the evening before.

Q. How many miles is the cache from the creek at Cape Lapin?

A. I should judge about 45 or six miles.

Q. In what direction?

A. It is northeast, I should judge.

Q. You were in there when the bags of clothes were found?

A. No, sir.

Q. When did you first see these bags of clothes?

462 A. They were brought to the camp and delivered to me.

Q. Where was the camp?

A. The camp was at Shaw Bay.

Q. Did you examine them then?

A. One only.

Q. What did you do with the bags; what did you find in the bags then?

A. There was some clothing and some blankets, I think; that was all; and there was a revolver, I think; no, there was not.

Q. What kind of blankets were they?

A. I do not remember; I think they were a pair of blue blankets; I had them put back in the sack and the sack tied up.

Q. Where were they taken to?

A. In the evening, taken aboard the "Manning."

Q. And from there?

A. They were brought to Unalaska.

Q. When they arrived at Unalaska, where were they placed?

A. They were placed in the hands of Deputy Marshal Sullivan in a room in the jail, and he was ordered to take charge of the key to that room.

Q. Were you over at Dora Harbor?

A. I was not.

Q. When did you first meet the defendant, Hardy?

A. He was brought on board the "Manning" on the morning of the twenty-fifth or twenty-sixth of July.

Q. By whom?

A. By Mr. Sullivan.

Q. When did you first meet Aston?

463 A. At the same time. He was brought on at the same time.

Q. Did you have any conversation with the defendant, Hardy, at the time he was brought on board the "Manning?"

A. I did not.

Q. What was done with Hardy and Aston?

A. Hardy was put in irons, I think, and put in what they call the "locker."

Q. Where were they brought to?
A. They were brought to Unalaska.
Q. Under arrest?
A. Under arrest.
Q. Did you hold a preliminary examination?
A. I did.
Q. Before whom?
A. Before me.
Q. Did the defendant, Hardy, make any statement?
A. He did. He expressed a desire to make a statement, which I allowed him to make.

The COURT. We will now adjourn until seven o'clock this evening.

The Court to jury: Gentlemen of the jury, you will go in charge of the bailiff to your dinner. You will return here at seven o'clock this evening. In the meantime you will not discuss this matter with anyone, and you will hold no communications with anyone nor will you discuss it between yourselves nor endeavor to reach an opinion among yourselves until the case is finally submitted to you.

And thereupon, this court was ordered to stand adjourned until the hour of seven o'clock p. m. this day.

464 UNALASKA, ALASKA, SEVEN O'CLOCK P. M.,
Thursday, September 5th, 1901.

All present. Proceedings resumed pursuant to adjournment.

Q. (By Mr. MCGINN.) Mr. Whipple, what was the date of the preliminary examination of the United States vs. Fred Hardy?
A. I can not remember the exact date; it was on the same day as the written statement that Hardy made first; whatever that was.
Q. What statement did you make to Hardy at that time as to his rights?
A. I distinctly stated to him that he was entitled to counsel; that he was under no obligations and need not make a statement unless he desired; and that the statement that he would make, if any, would be used against him at the trial.
Q. What, if anything, did he say?
A. He insisted upon making a statement. So a statement that he made was reduced to writing.
Q. By whom?
A. By Mr. Reed, the clerk of the court.
Q. Was it signed by the defendant?
A. It was.
Q. Was it read to the defendant before it was signed by him?
A. I think it was.
Q. Is that the affidavit that the defendant, Fred Hardy, signed at that time?
A. Yes, sir. This is the statement and that is the affidavit attached to it that was made.
Q. Is that the date that it was made?
465 A. Yes, sir; it was made at the time that I was presiding magistrate.

Q. What was the date?
A. July 30th.
Q. (By Mr. SULLIVAN.) When did you say this statement was taken?
A. It was made at the time of which it bears date—July 30th.
Q. That was the beginning of the trial?
A. Yes, sir; it was before the examination began.
Q. After he had been brought into your court?
A. Yes, sir.

Mr. SULLIVAN. Now, if the court please, we object to this statement in evidence, on the following grounds:

FIRST.

First. That it is immaterial and irrelevant.

Second. Upon the grounds that it appears that the statement purported to be introduced in evidence was taken by the committing magistrate before the examination of the witness on the part of the United States had been closed before the magistrate.

Third. That it does not appear from the testimony that the magistrate informed the defendant that if he waived making a statement his waiver could not be used against him on the trial.

Fourth. Also upon the ground that it does not appear from the statement that the defendant stated he was asked his age or name, or where he was born, or where he resided, or how long he had resided in any place stated by him. Neither does it appear therefrom that he was asked or stated what was his business or occupation. Neither does it
466 appear that he was asked by the committing magistrate to give any explanation that he might think proper under the circumstances appearing in the testimony against him, nor to state any facts which the defendant might think would tend to his exculpation. Nor does it appear that the answer of the defendant or that any answer of the defendant was read to him as each question was asked.

Fifth. Upon the further ground, if the court please, that the statement purported to be introduced in evidence was, and is, not authenticated in the manner prescribed by statute.

First. That there is no authentication by the United States commissioner to the effect that the defendant was informed of his rights as provided in section 307, title 1, or that after being so informed he made the statement.

SECOND.

In this, that the said statement is not signed or certified to by the committing magistrate.

THIRD.

In this, that there is no authentication whatever made by the committing magistrate.

(No ruling.)

Q. (By Mr. MCGINN.) When was that statement obtained from the defendant?

A. It was obtained before the proceedings began at all. He insisted upon making it; I told him to wait until the time prescribed by
467 the statute, but he insisted upon making this statement voluntarily. It was not taken under the statute, nor was it intended to be under the statute. I simply allowed him to make it as he requested. When we came to the time to take a statement under the statute I again put the statutory questions and gave him the right to make a statement and he refused to make any further statement. This was voluntarily and made entirely unadvised.

Q. I will ask you to examine this paper, Mr. Whipple, and state what it is.

A. This is a memo. of the defendant's refusal to make a statement required by section 307 of the statute.

Q. What case?

A. It is the United States *vs.* Fred Hardy.

Q. Was it filed?

A. Yes, sir; it was filed.

Mr. McGINN. We now offer this in evidence.

Mr. McGINN. That is all.

468 Q. (By Mr. SULLIVAN.) Mr. Whipple, did you not just start to inform me that this was taken in accordance with the statute?

A. No, sir.

Q. He had been brought into your court for trial?

A. Yes, sir; for a preliminary hearing.

Q. Before you as committing magistrate?

A. Yes, sir.

Q. And you took this statement after he appeared before you at that preliminary hearing?

A. I took it before I opened or began the hearing at all.

Q. Why did you inform him then of his right to have counsel?

A. The reason is that he volunteered to make a statement in advance. I stated to him, "you are entitled to counsel; you are also under no obligations to state anything here, but that if you do it will be used against you."

Q. Were you sitting as a committing magistrate or a private individual?

A. As a private individual.

Q. He had been brought there by the officer, was he not?

A. Yes, sir.

Q. In irons?

A. I do not think so.

Q. Was the time set for his preliminary examination?

A. It was.

Q. And you took his statement after that?

A. I did. He seemed to be bent to make one.

Q. Did you tell him that he could wait until the examination of the witnesses on the part of the United States had been closed, and then make a statement?

A. I told him that he would be given an opportunity to make a statement at the proper time.

469 Q. The clerk took it down?

A. Well, he happened to be there.

Q. You preserved it?
A. Yes, sir.
Q. It is preserved as a record in the case?
A. No, sir.
Q. How did you come to file it?
A. I may have filed it, but did not intend it to be any part of the record in the case. It may be filed, but I did not charge for taking it, nor did I consider it to be any part of the record.
Q. Is that your signature?
A. Yes, sir.
Q. Is that your file mark?
A. Yes, sir. I filed it, but did not consider it any part of the record. I considered it as I would any other statement that had been made a day before or three days after.
Q. I will ask you if you did not file an affidavit in this case?
A. I did.
Q. Did you not state in that affidavit as follows: "That the warrant was issued for the arrest of the defendant on the 25 of July, 1901," and after state in that affidavit that "defendant, Hardy, had been arrested on the 27th of July, 1901," as follows: "That thereafter to wit, on July 30th, 1901, the preliminary examination of the said Hardy upon the said charge came on regularly for hearing before me as United States commissioner; at which said time I notified said Hardy of his rights, viz, the right to have counsel to appear and represent him, the right to have witnesses appear on his behalf, and the right to refrain from any statement if he *so* fit so to do?"
A. I think I said that.
Q. In your affidavit?
A. Yes, sir.
469½ Q. That was after the case came regularly on for hearing, was it not?
A. No, sir; that is a mistake in the affidavit.

Mr. SULLIVAN. I submit that this was an affidavit or statement taken before this commissioner after this case had been called for trial, and is not admissable.

By the COURT. Objection overruled.

Mr. SULLIVAN. We note an exception.

United States of America, the commissioner's court, Dutch Harbor, before Hon. R. H. Whipple as commissioner.

UNITED STATES OF AMERICA
vs.
FRED HARDY.

Statement made by the defendant at his own request before the said commissioner at Unalaska on July 13th, 1901.

On or about, I do not know just the exact date I left the ship, the 9th of June, when I reached the shore, it was in a distance, I should judge, of ten or twelve miles before I struck the shore; when reaching the

shore I saw nobody; as I went down a distance of about ten miles from where I ran onto three men; I took them to be prospectors or miners; I asked these men if I could get something to eat, and the reply was yes. This was at a place called the Cove, where a hunter by the name of Charlie Rosenberg had a hunting cabin at the place; I went in and had supper with these three men, and they asked me who I was and where from; I told them; I stayed with them all that day and that evening until two o'clock next morning; that evening I asked these parties who they were; one of them
470 that seemed to be the boss, told me that they had got blowed away from a fishing schooner called the "Dove," and he said his other chums were also off the same vessel; they had two dories; one blue finish, I believe, not right; the other a kind of a dirty black color as far as I can explain; I did not particularly notice. That morning about two o'clock I left the cabin where the three parties were; don't remember their names; the oldest one, that seemed to be the boss, was named Jack; couldn't say if by name. The other was Jim; never heard *hame* of third person; he was a young fellow. That morning at two o'clock when I went to leave I took with me a bag which I supposed belonged to these fellows, and the bag had in it the stuff. It had in it two gold watches, and some razors, knives, don't know how many, and some other little trinkets, and they was by the table, where one was sleeping; he had a Winchester and a 44-revolver, and the oldest fellow had a gun—don't know the kind—and a revolver, and the other had a revolver—don't know the calibre of it. I took with myself when I left the two revolvers and the bag, and these fellows had provisions and blankets and clothes; one sailor's clothes bag, and they also had a canvass tarpaulin, with something inside wrapped up in a bag. Those three parties was seen and stopped at Charlie Peterson's, and also left some clothes at Charlie Peterson's. As I understand, Charlie Peterson is a hunter, and lives close to Marzhova. And these people told me that evening on my asking them how they got away from the ship with all that plunder, one laughed and looked at the other, and said, "Ha, you ain't on to the racket;" we made a catch. That was all on that subject. I never asked them more. This is all that I care to state.

FRED HARDY.

471 UNITED STATES OF AMERICA,
District of Alaska, Second Division, ss:

I, Fred Hardy, being first duly sworn upon my oath, do say: That I have heard the above and foregoing statement read over; that made the same voluntarily and not under duress of any kind whatsoever, and without promise of reward or clemency, and that the facts therein stated are true of my own knowledge.

FRED HARDY.

Subscribed and sworn to before me this 30th day of July, A. D. 1901.

R. H. WHIPPLE,
United States Commissioner in and for the District of Alaska, Second Division, at Dutch Harbor.

Q. Judge Whipple, did the defendant at any time after this make a different statement to you, or any statement to you?

A. He made a statement after that.

Q. Please state to the jury what that statement was.

Q. (By SULLIVAN.) Where was this statement made?

A. In the court room at the jail.

Q. Were you acting as committing magistrate at the time?

A. No, sir.

Q. Were you asking him questions?

A. No, sir; I had been informed by one of the men at the jail that he wanted to talk with me, and I told the person, whoever it was, that he could bring him in if he wanted to talk with me; he was brought in and informed me that he desired to talk about this case.

Q. He knew you were committing magistrate at the time, did he?

A. Yes.

472 A. Yes; he had been committed by me before that time.

Mr. SULLIVAN. We object to that as immaterial, irrelevant, and upon the further ground that a statement made to an officer is not admissible in evidence.

COURT. Objection overruled.

Mr. SULLIVAN. Exception.

COURT. Allowed.

A. He stated upon that occasion that his former statements were untrue; he said that he had come off the fishing schooner "Arago" a few days after George Aston, and I think he fixed it about the 9 of June; that he was a sailor on the "Arago," and that the "Arago" had come to Cape Lapin for water; I do not know if I can say his exact words; that they put off two dories with barrels to get water; Mate Johnson and Mate Clark—I think, were the names of the men that he gave—came off with him; that when they arrived at the shore, at the mouth of the creek, a tent was then standing on the black sand—that is, below high-water mark, as I took it; and that in front of it was some shovels and some other things; that they landed, got one load of water, and went back; that after the first load of water, and while it was being loaded, he and Mate Clark went up on the hill to shoot a fox; that they came back to the boats, and went on to the "Arago" with the first load of water, and then came back after a second load of water. In the crew there was twelve or thirteen men, including two mates. When they got the second load of water loaded, he made an excuse that he had lost a glove while he was out looking for a fox, and he went up to look for the glove; he said he did not return; he said he took a run over the hills; that he proceeded up the beach eastward; that until about six or seven o'clock in the evening he came to

a cabin; at that cabin he found George Aston and three other fel-

473 lows; that Aston told him there had been a robbery; this was the first talk he had with Aston, and he said that after that Aston went into the cabin and was talking with these three men; that he remained outside, but he heard the conversation, to the effect that these fellows asked Aston what kind of a fellow he was—if he was all right; he said if he was not, they would plant him. Aston told them that Hardy was all right, and would not inform on them. Then Aston, after they had their supper, took him out again, and that time they went down on a creek and sat on a log, and he told him that a murder had been committed, and that they had better get out of there. They then planned; he and Aston, too. He said these people had the goods that was found in his possession; when he arrived

at that cabin they had the goods. He and Aston then and there entered into an agreement whereby they were to stay in there that night and get up about two o'clock in the morning and steal this stuff and carry it away, which they did; that he went from there to Scott's camp. That is all that I remember.

Q. Did he state at the time where the tent was located he said that he saw on the beach?

A. Yes, sir; he said it was located on the black sand.

Q. Did he say on what part of the island it was?

A. He said it was at the mouth of the creek at Cape Lapin.

Q. Did he say whether or not there was anything in the tent?

A. He did not, except what was laying around in front of it—some shovels and picks.

Q. Did he say whether or not he had lost his glove?

A. He said that was a sham; that he did not lose any glove, but that he did that in order to get away.

Q. Did he say anything about Aston having shown him a watch?

A. Yes, sir; he said that at the talk at the cabin Aston showed him a watch, marked from "Julia to Florence," or "Florence to Julia."

Q. Did he what he took from that cabin when he left there?

474 A. No, sir; he did not say that he took anything. He said that he went up there over the hill to find his glove, and the boats went away and left them.

Q. I mean at the cabin?

A. Yes; he said they took the stuff that was found on him when he was arrested—the watches and revolvers.

Q. Did he say whether or not Aston accompanied him to Scott's camp?

A. No, sir; he did not.

Q. That is the whole of the statement that he made?

A. That is the whole as nearly as I can remember it.

Q. I will ask you to examine plaintiff's Exhibit I, and plaintiff's Exhibit J, and state whether or not you have ever seen these watches before?

A. That is a watch that was turned over to me by Mr. Sullivan on the morning that he brought the defendant, Mr. Hardy, on board the "Manning" (refer'ing to plaintiff's Exhibit I); this is also another watch that Mr. Sullivan turned over to me at that time (referring to plaintiff's Exhibit J).

Q. Did Mr. Sullivan turn over any revolvers or firearms to you?

A. He did, but I requested him to keep them; he showed me two revolvers.

Q. Examine plaintiff's Exhibit H and state whether or not you have seen it before.

A. That is a pin that Mr. Sullivan turned over to me at the same time that he did the watches.

Q. Examine plaintiff's Exhibit G and state whether or not you have seen it before.

A. That is a money bag that Mr. Sullivan turned over to me at the time he gave me the watches, and some money, and that stick pin.

Q. There was some money in it?

A. Yes, sir.

475 Q. What amount?

A. I think there was $500.00 in the sack he gave me—$585.00 all together—there was $500.00 in the sack and then he took a roll out of his pocket.

Q. What kind of money was it?

A. All in bills.

Q. Paper money?

A. Yes, sir; he gave me $585.75 or $598.75 all together.

Q. Did he give you any Filipino money?

A. Yes, sir; he gave me a little sack.

Q. Did you see a miner's candlestick among this stuff?

A. I did.

Q. What kind was it?

A. It was a miner's candlestick with a handle on it; it had a spring to hold the candle and had a point to stick into the wall.

Q. Examine plaintiff's Exhibit F and state whether or not that is the candlestick you have reference to.

A. Yes, sir; that is the candlestick which we got.

Q. Judge, without going into the matter of this clothing separately, I will ask you to state whether or not it corresponds in general appearance to the clothing that was in the commissioner's court at the preliminary examination in the case of the United States vs. Fred Hardy?

A. It is.

Q. Do you know from where that stuff had been taken to the commissioner's court?

A. I was one of the party when it was taken from the cache.

476 Cross-examination:

Q. (By Mr. SULLIVAN.) This money that Sullivan turned over to you; you say it was $500.00 in the bag, and the other $85.00 that was handed to you by Sullivan separately was in bank notes also?

A. Yes, sir.

Q. You kept the $585.00 together?

A. Yes, sir; $13.75 I turned over to Richards.

Q. You kept the $585.00?

A. Yes, sir.

Mr. SULLIVAN. That is all.

Examination of Mr. Whipple closed.

477 Mr. JOHN R. RICHARDS, a witness produced on behalf of the Government, having first been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) What is your name?

A. John R. Richards.

Q. What official position, if any, do you occupy?

A. Deputy United States marshal.

Q. For what district?

A. District of Alaska, second division.

Q. How long have you been such?

A. Since the eighth day of July.

Q. Have you ever been to Cape Lapin?
A. Yes, sir.
Q. When were you there?
A. A week ago last Monday.
Q. Who was with you at the time?
A. George Aston, Owen Jackson, Lieut. Edmonds, Dr. Weeks, First Asst. Engineer Kotzschmarr, and several members of the crew of the cutter "Manning."
Q. What, if anything, did you find buried in the ground near the creek at Cape Lapin?
A. We found some valises.
Q. Who found these valises?
A. I did.
Q. Who was with you at the time?
A. George Aston.
Q. Did George Aston direct you to where the valises were?
A. He did not.
Q. How did you happen to find them?
478 A. I noticed a burrowed spot in the bank of the creek, and I thought it might be a cache. There was fresh dirt there apparently.
Q. What condition were these valises in?
A. When I found them there was only a portion of them exposed. They looked like the paper had been scratched off by foxes; and when I took the dirt all away from them I found them in the condition they are now. They were cut to pieces.
Q. Examine those valises and state whether or not they are the remains of the valises—of those you found at Cape Lapin.
A. Yes, sir; those are the valises. There were two large ones and that small hand valise.
Q. Can you specify on the chart the exact place where you found those valises?
A. I would say that was the spot—there—on the right-hand side of the creek going up from the mouth of the creek and about half way between the mouth of the creek and an old cabin.
Q. Were you at a place known as Charley Rosenberg's cabin?
A. I was.
Q. Near Shoal Bay?
A. Yes, sir.
Q. When were you there?
A. I think it was Sunday night; the night of our arrival at Shoal Bay, on the "Manning."
Q. Do you know whether it was a week ago Sunday or two weeks?
A. It was one week ago.
Q. Who was with you at this cabin?
A. George Aston, Owen Jackson, and yourself.
479 Q. Did you see any—what, if anything, did Aston do while he was there?
A. Aston showed us where some guns were cached under the eaves of the roof of the cabin, and also some cartridges in a bottle—thirty thirties in a bottle—and some loose shotgun cartridges.
Q. How were these guns wrapped up?

A. They were wrapped in a piece of canvas.

Q. I will ask you to examine that canvas and state whether or not that was the piece of canvas.

A. Yes, sir; that was the piece of canvas.

Q. Examine plaintiff's Exhibit DD and state whether or not that was one of the guns you found in the canvas.

A. Yes, sir; I should say that was the shotgun. It was in that condition. It was taken apart.

Q. I will ask you to examine plaintiff's Exhibit EE and state whether or not that is one of the guns that you found wrapped up in that canvas.

A. Yes, sir; it is the 30–30 Marlin rifle knocked down.

Q. You say that you found a bottle of cartridges there?

A. George Aston found them, I think.

Q. Were you there?

A. Yes, sir.

Q. What kind of a bottle was it?

A. A small glass bottle with a narrow neck.

Q. Examine plaintiff's Exhibit M and state whether or not that coresponds with the bottle that you saw at the cabin that night.

A. Yes, sir; that is the bottle.

480 Q. You state that you found some shotgun shells?

A. Yes, sir; there were about a dozen.

Q. Where did you find them?

A. Inside the cabin.

Q. What color were they?

A. They were blue paper shells.

Q. Do you remember the size?

A. I do not.

Q. I will ask you to examine these shells and state whether or not they are the ones you found in the cabin that night.

A. Yes, sir.

Q. Where were the guns found, Mr. Richards?

A. Under the eaves of the roof; it was a dirt roof, and the dirt had settled away from the eaves, which left an opening large enough to put the guns in. It was at the left-hand side of the door at the entrance to the cabin.

Q. What was done with them?

A. They were carried to the "Manning" in the condition that they were found, the next morning. Next morning they were opened on board the "Manning."

Q. In your presence and several others, and brought to Unalaska, were they?

A. Yes, sir.

Mr. McGINN. That is all; take the witness.

481 Cross-examination:

Q. (By Mr. SULLIVAN.) Were you with Mr. Aston when he found these cartridges, Mr. Richards?

A. Yes, sir.

Q. Did you see him puck them up?

A. We were inside of the cabin at the time, and when he picked them up he made the remark: "Here are some cartridges."

Q. That was the first time you saw them?
A. Yes, sir.
Q. Where was he when he made that remark?
A. We were all inside the cabin together; after he had lit a lamp that we found there, he found these cartridges and shells.
Q. Were you inside the cabin when he made this remark?
A. Yes, sir.
Q. These guns were found inside of the cabin?
A. No, sir; they were found outside.
Q. Did he show you where he found these cartridges?
A. Well, there was no remark made in reference to where he found the cartridges; he simply remarked, "Here are some cartridges," and apparently he had taken them off of a shelf on one side of the cabin.
Q. On the inside?
A. Yes, sir.
Q. And so that was the first you knew of the cartridges?
A. Yes, sir.
Q. You did not find any with the guns?
A. No, sir.

Q. Did you examine where the guns were?

482 A. After the guns were taken out I reached my hand in and did not find anything. Also, I found on the opposite side of the door a similar opening and felt in it and did not find anything.

Q. You speak of these guns being placed under the eaves on one side of the cabin, where some of the dirt had fallen down?
A. Yes, sir.
Q. Did that form a place of concealment for the guns?
A. Yes, sir; the opening was in far enough to completely hide the guns and extended probably the full length of the cabin.
Q. Then a person passing the cabin would not see the guns unless by making an examination?
A. No, sir; I think not.
Q. After Aston said to you, "Here are some cartridges," or words to that effect, then you took possession of the cartridges?
A. Yes, sir; they were put with the guns.
Q. He handed you this bottle with the cartridges in it?
A. Yes, sir.
Q. You did not see where he got them from, but think he got them from a shelf in the cabin?
A. Yes, sir; I am quite sure of that.

Mr. SULLIVAN. That is all.

483 Redirect examination:

Q. (By Mr. MCGINN.) Is it not a fact that Aston found these bottle' of cartridges in the same place where he found the guns?
Mr. SULLIVAN. We object to that question.
The COURT. Objection sustained.
Q. Do you know whether he found the shells or the cartridges inside the cabin?
A. He found some cartridges inside the cabin. I may be mistaken about the shells.
Q. Do you know whether he found the bottle of coal oil there?

A. Yes, sir.
Q. Where did he find that?
A. Just at the left-hand side of the second door, on the shelf. There was a bottle of coal oil there.
Mr. McGINN. That is all.
Q. (By Mr. SULLIVAN.) Where did you understand the shells were produced from?
A. I thought they were both found inside the cabin, but I may have been mistaken. The shells may have been taken out with the guns. They were pretty wet and cold.
Mr. SULLIVAN. That is all.
Mr. McGINN. That is all.

484 Mr. OWEN JACKSON, recalled by prosecution.

Q. (By Mr. McGINN.) I will ask you to examine this boot and state whether or not you have ever seen it before.
A. Yes, sir.
Q. To whom does that belong?
A. It belongs to me.
Q. Were you wearing that boot on or about the day, the sixth day of June of this year?
A. Yes, sir.
Q. Did you have that boot on at Cape Lapin the day that Con Sullivan was shot?
A. Yes, sir.
Q. You testified in your testimony, in your direct examination, that a bullet struck you on the leg or went through your boot. Is this the boot you have reference to?
A. Yes, sir.
Mr. McGINN. If the court please, we now offer this boot in evidence.
The COURT. Let it be marked "Plaintiff's Exhibit XX."
Q. Were you with Mr. Richards, George Aston, and myself at this cabin where it is claimed these guns were found?
A. Yes, sir.
Q. Do you know whether or not there were any cartridges found there?
A. Yes, sir.
Q. Do you know where these cartridges were found?
A. Yes, sir. They were found where the guns were found—on the outside of the cabin, alongside the door.

Mr. McGINN. That is all.

485 Dr. J. WEEKS, a witness produced on behalf of the Government, having been first duly sworn, testified as follows:

Q. (By Mr. McGINN.) What is your name?
A. J. Weeks.
Q. What is your profession?
A. Physician.
Q. How long have you been such?
A. Three years.
Q. From what college, if any, did you graduate?

A. Department of medicine and surgery, Michigan.
Q. Where are you at present employed?
A. In the United States Revenue-Cutter Service.
Q. On what boat?
A. On the "Manning."
Q. Have you ever been on Unimak Island?
A. Yes, sir.
Q. Do you know where Cape Lapin is?
A. I do.
Q. Were you present at coroner's inquest that was held over some persons there in the month of July of this year?
A. Yes, sir.
Q. Did you make an examination of these bodies?
A. I did.
Q. Did you make an examination of what was claimed to have been the body of Con Sullivan?
A. I did.
Q. I will ask you, from the examination that you made, whether you saw any evidence of violence or injury upon the body that you saw at that time?

486 A. In the right seventh rib, about four inches from the spine, I found a round hole about five-eighths of an inch in diameter, a smooth cut; that was the only mark I could find at that time.

Q. Was there much meat left on the body?
A. Very little.
Q. I will ask you what, in your opinion, was the cause of that hole that you mention?
A. In that place, in my opinion, it could have been made by nothing but a bullet.
Mr. McGINN. That is all. Take the witness.
Mr. SULLIVAN. That is all, Doctor.
(Testimony of Dr. Weeks closed.)

487 Mr. BOWEN, called on behalf of the Government, did not respond.

Mr. MARTIN TRICKER, a witness produced on behalf of the Government, having been first duly sworn, testified as follows:

Q. (By Mr. McGINN.) What is your name?
A. Martin Tricker.
Mr. SULLIVAN. We object to the witness on the ground that his name does not appear on the indictment.
The COURT. Subject to a further consideration of the ruling, the court will maintain the ruling that it made this afternoon. Objection sustained.
Mr. SULLIVAN. I will say to the court that we have been trying to expedite matters as much as we could, and would like as much opportunity as we could to discuss the case before we commence it. We would like the court to give us as much time as the court can give us.
There is just one matter: I would like to call Mr. Aston for cross-examination.
The COURT. You may call him.

488 Mr. GEORGE ASTON, recalled for further cross-examination, testified as follows:

Q. (By Mr. SULLIVAN.) Mr. Aston, you were bound over upon the charge of murder of Con Sullivan and the other deceased persons, the same time as Mr. Hardy was?

Mr. MCGINN. We object to that as incompetent, immaterial, and irrelevant.

(No ruling.)

A. I was bound over and was given to understand that it was a charge for having stolen property in my possession, which at the time was known to have been belonging to the bodies of one Con Sullivan, Florence Sullivan, and P. J. Rooney.

Q. For having stolen property belonging to them in your possession?

A. Yes, sir.

Mr. SULLIVAN. If the court please, I would like to have Mr. Whipple recalled to show that the charge against Mr. Aston remains undisposed of. It has not been dismissed. Is that true, Mr. McGinn?

Mr. MCGINN. It is, but I would object to the admission of it.

The COURT. Objection is overruled.

Mr. Sullivan asks the court for time, until eleven o'clock to-morrow, Friday, September 6th, 1901, in which to prepare a defense.

The court instructs Mr. Sullivan that if, after court convenes to-morrow, he is not ready to go on with the case, he will be given more time.

489 Court to jury: Gentlemen of the jury, you will remember what the court has so frequently now stated to you.

You will go in charge of the bailiff, who will take you to your room, where you will have your breakfast and return to the court at ten o'clock to-morrow.

You will not talk to anyone in regard to this case, nor allow anyone to talk to you. You will not discuss it among yourselves, nor will you talk to the bailiff or anyone. Nor will you endeavor to agree upon an opinion in the case.

And thereupon the court was ordered to stand adjourned until the hour of ten o'clock a. m. to-morrow, Friday, September sixth, 1901.

490 UNALASKA, ALASKA, TEN O'CLOCK A. M.,
Friday, September sixth, 1901.

All present.

Court convened at ten o'clock, and upon the application of the defendants for more time in which to prepare a defense, a recess was taken until the hour of one o'clock p. m. this day without any further procedure.

FRIDAY, *September 6th, 1901—1 p. m.*

All present. Proceedings resumed pursuant to adjournment.

Mr. GEORGE ASTON, recalled by prosecution for further examination, testified as follows:

Q. (By Mr. MCGINN.) Mr. Aston, do you know the bunk that the defendant occupied (Hardy) while he was in the cabin at the fishing station at Dora Harbor in the month of July?

A. I do.

Q. What part of the cabin was it in?

A. It was on the left-hand side of the cabin coming from the door, and in the upper bunk amidships in tier six, fore and aft.

Q. Did you, at any time while you were together there, see this canvas bag?

A. I seen that canvas bag in the cabin, in the bunk house at the fishing station.

Q. Where was it when you saw it? Where was it kept at that time?

A. On the wall and on a little shelf. Sometimes it was hanging on the wall and sometimes on the shelf.

491 Q. How close to Hardy's bunk?

A. Right in the bunk.

Q. Did you see a revolver there?

A. No, sir; I did not.

Q. Did Hardy have that canvas sack with him at the time that he arrived there?

A. No, sir. He made that there after arriving at the fishing station.

Q. Did he have the stuff that is spread out there?

A. Yes, sir.

Mr. McGINN. That is all.

Mr. SULLIVAN. That is all.

(Testimony of Mr. Aston, recalled, closed.)

492 Mr. HUGH MCLACHIN, a witness produced on behalf of the Government, and having been duly sworn, testified as follows:

Q. (By Mr. McGINN.) Mr. McLachin, what is your name?

A. Hugh McLachin.

Q. Were you a member of the coroner's jury that sat over the remains of Con Sullivan and Florence Sullivan and P. J. Rooney?

Mr. SULLIVAN. We object to this witness on the ground that his name does not appear on the indictment.

Mr. McGINN. Now, if the court please, I do not believe that it is essential, and I do not believe that the authorities hold that the statute implies that all witnesses that the prosecution shall call upon the trial of a cause shall be the witnesses that are called before the grand jury. That a witness who does not happen to be before the jury at the time the indictment is found, I think that person ought to be allowed to testify on behalf of the prosecution. He did not appear before the grand jury; therefore his name could not be endorsed on the indictment. He is an essential witness; it is merely to corroborate facts that have already been stated. I think it is a very hard rule and very harmful to the prosecution that witnesses who did not appear before the grand jury are not permitted to go on the stand and testify.

The COURT. That may be true and it may be harmful and it may not be a correct rule. The court is in doubt on that question, and having a doubt, the court will exclude that witness.

Mr. McGINN. The Government rests.

493 DEFENSE.

Mr. FRED HARDY, called as a witness on his own behalf and having been duly sworn, testified as follows:

Q. (By Mr. SULLIVAN.) What is your first name, Mr. Hardy?

A. Fred.
Q. Fred Hardy?
A. Yes, sir.
Q. Where were you born?
A. In the State of Ohio.
Q. In what year?
A. '76.
Q. At what place?
A. At the county seat of Perry County, Lexington, Ohio.
Q. How long did you live in Ohio?
A. From seventy-six to ninety-seven.
Q. What was your occupation?
A. An operator.
Q. When did you become an operator?
A. In 1891.
Q. Just explain to the jury what you mean by an operator. What particular kind of business was it?
A. Operating consists of telegraph business; a man who sends messages.
Q. Telegraph messages, you mean?
A. Yes, sir.
494 Q. How long did you continue as such operator?
A. To the year ninety-seven.
Q. In ninety-seven what occupation did you pursue, or nighty-eight?
A. My occupation became a United States soldier.
Q. For what service?
A. Service of the army.
Q. Where were you when you enlisted?
A. In the State of Ohio.
Q. At what point?
A. At Columbus.
Q. Did you enlist at Columbus, finally, or at some other point?
A. I enlisted in the State of Ohio, at Columbus, the capital.
Q. In what company did you enlist?
A. No particular company. I enlisted in the Second United States Cavalry.
Q. Were you examined at Columbus?
A. I were; yes, sir.
Q. That was the Second United States Cavalry?
A. Yes, sir.
Q. After you enlisted what did you do?
A. I was ordered to my regiment, known to be the Second United States Cavalry, where I was forwarded to where the regiment was stationed at Wingate, New Mexico.
Q. Where did you go from there?
A. I was ordered back to Chickamauga Park?
Q. In Tennessee?
A. Yes, sir.
495 Q. How long were you there?
A. Until March fifth.
Q. Of what year?
A. Eighteen hundred and ninety-eight.

Q. Where did you go from there?
A. I was ordered to Nashville, Tennessee.
Q. How long were you at Nashville?
A. I was at Nashville during the month of March, till on or about the tenth or twelfth of April.
Q. Of what year?
A. Eighteen hundred and ninety-eight.
Q. How long did you say you remained at Nashville?
A. From March tenth, until somewhere on or about the tenth of April.
Q. Where did you go from Nashville?
A. I remained there.
Q. How long did you remain there?
A. I remained there from March till April.
Q. Where did you go from Nashville? Did you ever leave there?
A. I did.
Q. Where did you go to?
A. I went to Chickamauga Park.
Q. You returned there?
A. I did; yes, sir.
Q. How long did you remain at Chickamauga Park?
A. I remained there until June 11th of the same year.
Q. Then where did you go to?
A. I was ordered from there to Tampa, Florida.
496 Q. How long were you at Tampa?
A. I can not just say how long I was there. Sixty days or somewhere about there.
Q. Where did you go from Tampa?
A. I went to the Philippine Islands.
Q. When did you arrive at the Philippine Islands?
A. I arrived at the Philippine Islands in August. I arrived at the Philippine Islands the fifteenth day of September, 1898.
Q. Eighteen hundred and ninety-eight?
A. Yes, sir.
Q. How long after your arrival did you remain in the Philippine Islands?
A. Until I returned.
Q. How long was that?
A. I remained there from the 15th day of September, 1898, until the tenth day of January, 1901.
Q. Do you mean, Mr. Hardy, that you remained there continuously?
A. I mean that I were there during that period of time, in the islands of the Philippines. Stayed all the whole amount. Not on one island.
Q. You went to the Philippines in September, 1898?
A. I did.
Q. After you went to the Philippines did you return to the United States before 1901?
A. I did not.
Q. What position in the army did you occupy in the Philippines?
A. A commissioned officer, sir.
Q. As what officer?
A. As a second lieutenant.

497 Q. In what regiment?
A. In the First Tennessee.
Q. In the First Tennessee?
A. Yes, sir.
Q. Second lieutenant?
A. Yes, sir.
Q. When you originally enlisted, what did you enlist as?
A. I enlisted as a private, sir.
Q. When did you say you returned to the United States?
A. On January tenth, 1901.
Q. Was it January or February?
A. January.
Q. That is this year?
A. Yes, sir.
Q. On what vessel?
A. On the "Logan," United States transport.
Q. Are you sure that you returned on the "Logan?"
A. I am; yes, sir.
Q. After you arrived in the Philippines, what was the—you left the Philippines on January 10th?
A. Yes, sir.
Q. What time did you arrive in the United States?
A. On February 10th.
Q. At what point?
A. Well, I arrived at—I think, the dock number two to the best of my knowledge.
Q. At what city?
A. At the Presidio.
498 Q. How far from San Francisco?
A. About four miles.
Q. That is the army post adjoining San Francisco, is it not?
A. It is; yes, sir.
Q. After your arrival at the Phil/ip'ines in September, 1898, state generally to the jury where you were stationed?
A. Well, when I returned to the Phil/ip'ines I was stationed at Manilla for the period of sixty days; then I were ordered to the south; to an island which is known by the name of Penay.
Q. How far from Manilla?
A. About five hundred miles. I do not know the distance.
Q. After the expiration of the sixty days, when you went there, how long did you remain on the southern islands?
A. I remained on Penay Island for the period of—I remained there about a period of six months.
Q. That was on this southern island?
A. It was on the Penay Island.
Q. About six months?
A. Yes, sir.
Q. Then where were you after that time?
A. I was ordered to the island of Negros.
Q. What service were you performing on that island?
A. In command of the signal corps detachment.

Q. How long were you on that island?

A. I were on there for the period of—I can not call just the exact time, but I was there until I received an order to return to the States, the tenth day of January.

Q. That is the day you started to return, or the day you
499 received the orders?

A. That was the day I started to return. The day I received the order was about the latter part of September.

Q. After your arrival in San Francisco, or the Presidio, where did you go after arriving there?

A. I was stationed at the Presidio. I remained at that place——

Q. For how long?

A. From the 10th of February until the 28th of March, 1901.

Q. When were you mustered out of the service?

A. On the 28th day of March.

Q. 1901?

A. Yes, sir.

Q. At the time that you were mustered out of service, on the 28th of March, this year, were you paid any money?

A. Yes, sir.

Q. Who by?

A. By Major Whitney.

Q. At what point?

A. At the Presidio, California.

Q. How much were you paid?

A. Eighteen hundred and seventy-five dollars and seventy-five cents.

Q. What was your salary per month as a second lieutenant?

A. My salary was one hundred and fifteen dollars per month in the foreign service.

Q. You mean while you were in the Philip'ines?

A. Yes, sir; foreign service.

500 Q. Did you ever see the schooner "Arago?"

A. I did; yes, sir.

Q. Where did you first see that schooner?

A. In San Francisco, California.

Q. When?

A. On or about April tenth.

Q. This year?

A. Yes, sir.

Q. Did you enter into the service of that schooner?

A. I did; yes, sir.

Q. On or about what date?

A. The fifteenth day of April.

Q. This year?

A. Yes, sir.

Q. In what capacity did you enter into its service?

A. As a fisherman.

Q. For what point or place?

A. For the Behring Sea.

Q. Were you signed for the cruise in the Behring Sea?

A. Yes, sir.

Q. Did you actually enter into the service of the vessel?
A. I did; yes, sir.
Q. On what date?
A. On the 15th day of April.
Q. This year?
A. This year.
Q. Upon what date did the "Arago" leave San Francisco after you entered upon its service?
501 A. Upon the 15th day of April.
Q. Do you mean by that that this is the date it left there?
A. Yes, sir.
Q. Where for?
A. For the Behring Sea.
Q. How long was she on that trip, after leaving San Francisco, before arriving in the waters of the Behring Sea?
A. From the 15th day of April to the 18th day of May, 1901.
Q. Before she arrived in the Behring Sea?
A. Yes, sir.
Q. Did she cruise in the waters of the Behring Sea before landing?
A. She did not cruise; she entered through the Unimak Pass into a bay called Dublin Bay, where she anchored.
Q. About what time did she anchor in Dublin Bay?
A. On the 18th day of May, 1901.
Q. How long did she remain there?
A. She remained there until the 17th, I believe.
Q. 17th of what?
A. No; she remained there until the 15th day of May, 1901.
Q. When did you say she arrived?
A. On the 18th.
Q. You now say she remained until the 15th?
A. I have got it mixed up. She landed on the 18th day of May, 1901; she remained there until the 17th day of May.
Q. You have testified that the boat arrived there on the 18th day of May.
A. I understand; I have got it mixed up. She arrived at
502 Dublin Bay on the 18th of May. She laid there until the 25th day of May, 1901.
Q. When you spoke of the 15th and 17th you meant the day after the arrival of the boat?
A. Yes, sir.
Q. Were you on board her all this time?
A. I was.
Q. Was George Aston?
A. He was.
Q. Was George Aston on board this schooner when she left San Francisco?
A. He was.
Q. Did you meet him on board the vessel?
A. I did.
Q. State to the jury, if you know, on what date George Aston left the schooner "Arago," after its arrival at Dublin Bay.

A. George Aston left on the 29th day of May, 1901.
Q. Where was the schooner between the 25th of May and the 29th of May, 1901?
A. She lay to the southward of Snapper Island.
Q. Did she go from Dublin Bay to Snapper Island?
A. She did.
Q. It was while she was at Snapper Island that George Aston left the schooner, was it—the "Arago?"
A. Yes, sir.
Q. That was on the 29th day of May, this year?
A. Yes, sir.

Q. Did you see him leave?
503 A. I can not particularly say whether I saw him leave or not; I saw him about twenty minutes before he left.

Q. Did he say anything about leaving?
A. He said he was going out after another load of fish.
Q. While you were on board the vessel, did he ever return to the vessel?
A. No, sir; he did not.
Q. At what time—did you ever at any time leave the schooner?
A. I did; yes, sir.
Q. Where was she first anchored when you first left her?
A. She was not anchored when I first left her; she was to the northward of Snapper Island.
Q. What day was that?
A. It was the 30th of May, 1901.
Q. Where did you go then?
A. You mean after I left the schooner?
Q. Yes, sir.
A. I went ashore on Snapper Island.
Q. What were you doing there?
A. On a search for a man by the name of George Aston at that place.
Q. Is that this George Aston?
A. Yes, sir.
Q. Who accompanied you, if anyone?
A. The first and second mates of the schooner and two other fishermen.
Q. Now, did you return to the vessel after that?

A. I did, sir.
504 Q. When did you leave the vessel again?
A. We left the vessel on or about the 31st of May, 1901.

Q. Where did you go then?
A. I went ashore.
Q. Who accompanied you, if anybody?
A. The first and second mates and two fishermen.
Q. What were you doing on that trip?
A. We were looking for Aston.
Q. Did you find him?
A. No, sir.
Q. When did you return to the vessel on that trip?
A. We returned to the vessel about five o'clock.
Q. When did you again leave the vessel?

A. The 10th day of June.
Q. Where was she at that time?
A. At a place called the Watering Springs.
Q. Near Cape Lapin, or about Cape Lapin?
A. I was told since that it is.
Q. You did not know it at the time?
A. No, sir.
Q. What did you and the men do when you first left the vessel at Cape Lapin on the 10th of June?
A. Started for shore to get water.
Q. What time in the morning did you first leave the schooner at Cape Lapin on the tenth day of June?
A. It was four o'clock.
Q. Did anyone accompany you at that time?
A. They did.
505 Q. Who was it?
A. The full crew of the fisherman; also the two mates.
Q. And did you return to the vessel after that time?
A. I did; yes, sir.
Q. At what time and what date?
A. The same date; about nine o'clock; after I had left.
Q. Returned about nine o'clock?
A. Yes, sir.
Q. After you returned at nine o'clock, did you again leave that vessel at any time?
A. I did; yes, sir.
Q. At what time?
A. At 10.30.
Q. On what date?
A. On the 10th day of June, 1901.
Q. You left at 10.30, you say?
A. Yes, sir.
Q. Where did you go after leaving the vessel at 10.30 o'clock on the 10th day of June?
A. We returned to the springs.
Q. These watering springs?
A. Yes, sir.
Q. How long did you remain there?
A. I did not remain there that time at all.
Q. What did you do? Where did you go?
A. After we reached the springs the second trip I complained that I had lost my glove; I returned to the top of the hill and kept on going.
506 Q. In what direction?
A. To the best of my knowledge it was north.
Q. At what point did you finally arrive?
A. I arrived at a place called Charley Rosenberg's hunting cabin.
Q. How far was that, in your judgment, from the place where you left the vessel?
A. I should judge about ten or fifteen miles.
Q. I will ask you if, on the day of the 10th of June, when you left

this vessel at either time, you saw anything like a tent or anything that indicated a tent to be in the vicinity or to be near this watering spring?

A. I did; yes, sir.

Q. What condition was the tent in at that time?

A. It looked like it was in a bad condition; it looked like it had been set up against the bank and had been removed, and the water looked like it had come up in it for a distance of fifteen inches.

Q. Did you notice whether any person or persons were in the tent at that time?

A. I did not look into the tent then; I did not see anyone in the vicinity of the tent.

Q. Before you left the boat on the morning of the 10th—the vessel "Arago"—I will ask you whether you observed or saw any persons in the vicinity of these springs, or Cape Lapin?

A. I did.

Q. Where were they?

507 A. They were going up about two miles from Cape Lapin, in a dory.

Q. I will ask you whether or not yourself or the captain, or both of you, observed either of these dories?

A. Yes, sir.

Q. Did you form an opinion or have a judgment as to what one or both of these dories was or to whom they belonged?

Mr. McGinn. We object to that as incompetent and irrelevant.

The Court. Objection overruled.

A. Yes, sir.

Q. Well, to what person or thing did they belong to?

A. The further dory, from all appearances, looked like a dory that belonged to the schooner that I was on.

Q. Was that the schooner "Arago?"

A. Yes, sir.

Q. State whether or not Aston had a dory when he left the "Arago."

A. He did; yes, sir.

Q. How many persons were in these dories?

A. Three, sir.

Q. You are positive that you did not leave the vessel "Arago" until June 10th?

A. Yes, sir.

Q. I will ask you whether or not you met anyone upon your arrival at this cabin of Charley Rosenberg's?

A. I did; yes, sir.

Q. Where were they when you met them?

A. There was a person consisting of a man standing outside of the cabin at a distance of three fathoms.

508 Q. You were going overland?

A. Yes, sir.

Q. You say three fathoms from you, or from the cabin?

A. From the cabin.

Q. You are giving sea distances of that?

A. Yes, sir.

Q. It was on the land?

A. Yes, sir.

Q. When you met that person was anything said between you?
A. Yes, sir. When I met him he asked me who I was, where I was from, and where I came from.
Q. Was that Charley Rosenberg?
A. No, sir.
Q. What else took place after you met him and he asked you these questions?
A. He asked me if I wished something to eat. I said yes.
Q. Did you get something to eat?
A. I did; yes, sir.
Q. Was anything else said?
A. Yes, sir; while I was at supper he told me he had two more partners, but they were out hunting at that time.
Q. Then what occurred?
A. After I finished my supper I got up, and he said, "We will go out and take a look to see if my chums are coming." We stepped outside and saw three men coming from the same direction that I came from.
Q. What became of these men?
A. They finally returned to the cabin.
509 Q. Did these men come to the cabin?
A. Yes, sir.
Q. Who were these three men; did you know them?
A. One of them was George Aston, supposed to be known as George Aston; his name was "Charley Ross" aboard the "Arago."
Q. Who were the other three? Do you know?
A. I do not, sir.
Q. Did you recognize Aston when he came up?
A. I did, sir.
Q. Did you and Aston, after his arrival, have any conversation?
A. We did; yes, sir.
Q. What, if anything, did Aston say to you?
A. He approached me and said, "How do you do?" and "How did you return here?" I told him I had run away from the vessel. He said, "Where?" I told him at the Watering Springs. He said, "I will see you after supper." Soon he went inside and had his supper; when he had eaten he returned outside and we went to the rear about twenty-five yards. We took a seat upon a piece of timber which I supposed was part of a mast of a ship. He then told me some different stories in reference to himself. He first told me that he had considerable time getting away from the vessel. He secondly told me that he had made up with these three parties, and that they were boys from the schooner "Dove;" they had also run away. He furthermore told me that he would tell me something private if I would keep my tongue. I said I would. After he saw I was willing to go with him he said,
510 "Well, will you give me your hand on it?" I said, "Yes, sir."
Then he said to me, "These three parties have robbed some people on this island," and, he said, "I cut up with them." I said, "Did you do the crime, or help to do the crime, or see it done?" He said, "No, sir." I said, "How do you know these men robbed the people?" He said, "I heard them say so." He said, "We are looking for a revenue cutter in here any moment," and he said, "The best thing you and

I can do is to get away from here." I told him I had committed no crime of any kind and was not going to run. He said I did not know what he did. He said he knew more about it, and was older than I was, and had been around the world more than I had, and he knew all about the affair. I said that if we could agree on it I would go with him; that I was alone, the same as he was. Then he said that we could go to Belkofsky or Sand Point, either one of these places, on the mainland.

Q. Are these places both on the mainland?

A. Yes, sir. Then he said we could return back to Frisco or some other point in civilization. He furthermore said that it was dangerous to remain in that vicinity, as the people were dangerous. He furthermore said that the people who were there had saw me leave the ship. I asked him where did they see me at? He said that that was all right; they saw me leave the ship. He furthermore said that he had to pull like hell to get out of the road of the schooner.

Q. The schooner "Arago?"

511 A. Yes, sir; while we were sitting on the piece of timber he showed me a revolver; about a forty-four Colt.

Q. What, if anything, did he say about the revolver?

A. He said it was a "Jim Whistler."

Q. Did he say where he got it?

A. Yes, sir; he said that he received it from these parties. At that moment there was one of the men which was there when I came there, came outside of the cabin, and he approached us, and he and Aston had a conversation. I did not hear what they was talking about. They then came back to where I was and we went into the cabin. The other two men were looking over some papers. I could not see what they were. After we returned to the cabin we had a conversation that did not concern anything much.

Q. Did you have any further conversation with Aston?

A. I did; the next day.

Q. Where was that?

A. That was up at Charley Rosenberg's cabin, about two miles.

Q. What time of day was it?

A. About ten o'clock in the morning.

Q. What were you doing on that day?

A. Hunting.

Q. Have any guns with you?

A. Yes, sir.

Q. What were they?

A. One was a 30-30 Marlin and the other was a shotgun, number 10.

512 Q. Are these the guns?

A. Yes, sir.

Q. Where did you first see these guns?

A. In Charley Rosenberg's cabin.

Q. At the time that you met these people?

A. At that time; yes, sir.

Q. What conversation did you have with Aston while you were on this hunting trip?

A. After we struck the bottom, about two miles, we saw a bunch of

deer. We went out a distance of one hundred yards further and sat down, waiting for the deer to approach us. In the meantime Aston, said we, "Have you made up your mind what you are going to do?" I said, "I am not going to stay here." Then he said to me, "You had better make up your mind quick." He said, "If you don't there is going to be trouble." I said, "What is it going to consist of?" He said, "That is all right. I know more about it than you do." He said, "I am older than you are and have been around the world more than you have and know more about this place." I said, "Has there been a murder committed on this island?" He said, "Yes, there was." I said, "Did you commit the murder?" He said, "No." "Did you see it committed?" "No, sir." I said, "How do know a murder has been committed on this island?" He said, "For the simple reason that I heard those three people say so."

Q. What conversation did you have with him in regard to getting away or in regard to any of this property?

513 A. I agreed that I would go with him. He then said to me that we could get away, take the guns and the stuff, and make our "get-away." He said that he had made a bargain to go to Marzovio and get another Winchester. He said these fellows had stolen the goods, and he knew it, and we would not get our hand in it if we stole the goods.

Q. From whom?

A. From these parties. I said, "I will do as you say; you are the oldest." Then he said to me, "I will take a blanket and some provisions and my dory to-morrow"—it being the night of the 14th of June—"and I will return to Marzovio to purchase a Winchester, and the night of the 15th you can take the gun and the other things that I have requested you to and go overland." He took a blanket, part of a double blanket, and a double-barrelled shotgun; he also had on his person a forty-four Colt. He took some provisions. He had several other things, such as a mineral glass and a compass. It was a round compass about the size of a dollar.

Q. When you arrived at this cabin and met these men and Aston and all of them at Rosenberg's cabin, state what, if any, articles they had there. That is, generally.

A. The evening I arrived there I saw in the cabin some provisions; I saw some canvas with stuff wrapped in; I can not say what was in it. A Winchester rifle set in the corner; it was a 32-60, I believe.

Q. Did you see any rifle or shotgun or pistol?

A. I saw one rifle. That was all in the cabin when I arrived.

Q. When did you see the shotgun first?

514 A. I never saw the shotgun until that evening.

Q. Until that evening?

A. Yes, sir.

Q. That evening, what did you see in the way of stuff, or property of any kind?

A. I saw a Winchester rifle, 30–30 Marlin; a double-barrelled shotgun number ten; three revolvers, .41, .44, and .45.

Q. Did you take any of these guns yourself?

A. Yes, sir; a 30–30 rifle.

Q. I want to know what you saw in the cabin on the evening of the day that you arrived at the cabin from the boat?

A. I saw a Winchester, as I stated; I saw some provisions; I saw some canvas; I saw, I believe, a blanket; I furthermore saw stuff that was in canvas bags; I saw small bags—no large bags.

Q. No large bags?

A. No, sir.

Q. When you went hunting on the next day, you had these two bags with you?

A. I did; yes, sir.

Q. When is the first day you saw the shotgun?

A. The day I arrived at the cabin.

Q. Where was it?

A. It was on the person of Aston.

Q. Where did he bring it from?

A. I could not tell; I saw him carrying it that day I returned from the hunting trip.

Q. That is the first time you saw the shotgun?

515 A. Yes, sir; the first time.

Q. Did you have any conversation at that time with Aston, or did he show you any watches while you were at the cabin, or while you were in the vicinity of the cabin?

A. He showed me one watch.

Q. Were you in the cabin or outside?

A. Outside.

Q. Where were you?

A. Sitting on the piece of timber.

Q. Was that the day before he started away?

A. Yes, sir.

Q. How far from the cabin were you at that time?

A. About twenty-five yards.

Q. He showed you one watch?

A. He showed me one watch; yes, sir.

Q. State whether or not you recognize either one of these watches as the one he showed you.

A. Yes, sir; I recognize the one with the chain (plaintiff's Exhibit J).

Q. What, if anything, did he say to you about that watch?

A. He did not say anything in particular about the watch; he took it out and looked what time it was and put it back in his pocket.

Q. Did you see any other watch while you were at that cabin?

A. I did; yes, sir.

Q. When was that?

A. That was that evening.

516 Q. Which evening do you mean; the first after you returned from hunting?

A. The evening after I returned from the ship.

Q. The first evening that you arrived?

A. Yes, sir.

Q. What watch did he show you then?

A. I could not give a description of it. He showed me a watch that consisted with a lot—it had a lot of engraving on it of some kind—a name.

Q. What did he say to you about that watch?

A. He and another boy had a pair of pliers and they were trying to take the lid off.

Q. What are pliers?

A. They are used in telegraph.

Q. Did you see anything of that kind introduced in evidence here?

A. Yes, sir.

Q. Are those what you refer to?

A. Yes, sir; those are the pliers.

Q. Well, now, what, if anything, did he say about the watch?

A. He said it would not do to leave the lid on the watch. He spoke up and said it was too bad to destroy it.

Q. Did they give any reason for wanting to take the lid off?

A. He said he did not want the lid on; he wanted to remove it.

Q. Did you say that there were any names on the watch?

A. Yes, sir; I did not see it myself, but I heard one of them speak the name.

Q. What name was on the watch?

A. From "Julia to Florence."

Q. Was any particular word said about removing the lid from the watch?

517 A. Nothing in particular, only they said it would not do to leave it on.

Q. What became of the watch?

A. I do not know.

Q. In whose possession was it the last time you saw it?

A. In Aston's hands.

Q. In the cabin?

A. In the cabin; yes, sir.

Q. You say that you agreed with Aston to steal the stuff from the other men in the cabin?

A. Yes, sir.

Q. Did you steal it, or any part of it, you and Aston?

A. We did; yes, sir.

Q. How long was that after they first arrived at the cabin?

A. Aston went away on the night of the 14th; the evening that I went away was the night of the 15th.

Q. Did Aston take anything with him?

A. He did; yes, sir.

Q. Did you have any conversation with Aston about where you would probably meet him again?

A. We did.

Q. Where did you expect to meet?

A. We expected to meet at Mr. Scott's camp or the fishing station.

Q. On the evening of the 15th, or whatever date it may have been that you left, what did you take with you?

A. I took a 30-30 Marlin rifle, a .41 Colt revolver, a sack that contained several little articles—there was razors, knives, and hair clippers.

Q. Is that the rifle that you speak of?

518 A. That is the rifle; yes, sir. (Plaintiff's Exhibit EE.)

Q. When did you leave—when did you arrive at Scott's camp, or any other point, after leaving this cabin?

A. I think it was—when I arrived at Mr. Scott's camp, I think it was on the evening of the 20th—was either the 17th, 18th, or 20th—I do not remember the date.

Q. Did you meet Aston when you arrived?

A. No, sir.

Q. Did he come there at all?

A. Yes, sir.

Q. Was that the same day that you arrived, or the day before or after?

A. The next day after my arrival.

Q. You do not remember the exact date?

A. No, sir.

Q. He came there the next day after you arrived?

A. He did, sir.

Q. Did you meet him after his arrival?

A. I did.

Q. How long after?

A. I can not tell; I was out prospecting with Mr. Scott's party.

Q. Did you have any idea of the time?

A. Just generally.

Q. How long after you arrived did you meet him? Do you know the time he arrived?

A. No, sir.

Q. What time of the day did you meet him?

A. About eight o'clock in the evening.

Q. When you met him did you have any conversation with him?

519 A. I did; yes, sir.

Q. Did he ask or say anything to you about the time when you left the schooner "Arago?"

A. He did; yes, sir.

Q. What did he say?

A. He asked me when I left.

Q. Do you remember your reply?

A. I do; yes, sir.

Q. What was it?

A. Four or five days after he did.

Q. I will ask you if, before you went to Scott's camp and before you and he separated at Rosenberg's cabin, if you had any conversation with him in regard to what you should do or say when you two met at Scott's camp?

A. We did; yes, sir.

Q. How long did you remain—you and Aston remain—at Scott's camp after you met Aston?

A. We remained there until he left the next morning after I met Aston.

Q. Did you leave together or separately?

A. Yes, sir; we left together.

Q. Did you have any conversation there as to where you should go?

A. Yes, sir.

Q. What was the conversation?

A. That we go for Unalaska and Dutch Harbor?

Q. How?

A. In the dory.

Q. Do you know whether or not he had a dory?
520 A. I do; yes, sir.
Q. Where was it at that time?
A. In his possession at Scott's camp.
Q. At Scott's camp?
A. Yes, sir.
Q. State whether you know whether or not that dory was a dory which had formerly belonged to the schooner "Arago."
A. It was.
Q. Did he tell you how he obtained the dory to leave the "Arago?"
A. Yes, sir; he did.
Q. What did he say?
A. He said he took the dory and left the ship.
Q. What did you actually do when you left Scott's camp—you and Aston?
A. We bought a couple of meals—provisions.
Q. After leaving in the morning?
A. We went up the pass—False Pass; we stopped about two miles this side of Marzovio.
Q. Were you in the dory?
A. We were.
Q. Which side was that? You say this side.
A. It is about south, I guess; southeast.
Q. It is what you call this side from there?
A. Yes, sir.
Q. Did you from to Dutch Harbor?
A. No, sir.
Q. What was the reason?
A. Because we met Charley Rosenberg. He told us we never
521 could reach the point in the dory.
Q. Where did you meet Rosenberg?
A. At his hunting cabin.
Q. About what day was that?
A. The thirtieth day of June, 1901.
Q. This year?
A. Yes, sir.
Q. Where did you leave the dory before you met Rosenberg?
A. About two miles above Mr. Rosenberg's cabin.
Q. Where did you go from the dory?
A. We walked down toward the cabin.
Q. Where did you leave the boat in the meantime?
A. On the beach, about two miles north of Rosenberg's cabin.
Q. Then you went down to the cabin?
A. We did; yes, sir.
Q. When you went there did you have this shotgun and rifle?
A. We did; yes, sir.
Q. Who was carrying the shotgun?
A. George Aston.
Q. Who was carrying the rifle?
A. Fred Hardy—myself.
Q. What happened as regarding the entrance to the cabin by you or Aston?

A. What do you mean, the same evening we arrived?
Q. Yes.
A. The same evening we arrived at the cabin there nothing very particular occurred.
Q. You say you first met Rosenberg on the 30th of June?
522 A. I did.
Q. When did you first arrive at the cabin?
A. On the 30th of June.
Q. Was it in the morning or evening?
A. In the evening.
Q. Was Rosenberg there at that time?
A. He was not.
Q. What occurred then?
A. The next morning me and Aston took the guns and went out hunting; we hunted around until late that evening; I guess the hour was something like ten or eleven o'clock. Then we returned to the cabin; when we approached the cabin I saw a pair of boots, supposed to be Indian boots, hanging outside; I stepped back and said to Aston, "There is a pair of boots; some one must be here." He said, "That is so; you take the shotgun and hide it." I did so.
Q. Where did you hide the guns?
A. About twenty-five yards from the cabin, by an old cabin that stood there.
Q. What did Aston do?
A. He went up and knocked on the door; some one hollered, "Who is there?" He said, "George Aston." Finally the fellow inside got up and came to the door; he opened the door and Aston stepped inside; I was standing outside. Aston hollered out, "Come in, Joe." He said he hollered twice, but I never heard him holler but once. After he hollered I returned inside; I stepped inside and found that it was Mr. Rosenberg, by the acquaintance of Aston.
523 Q. After you went inside what, if anything, occurred? Did you go to bed?
A. Yes, sir; after we had something to eat.
Q. Mr. Rosenberg gave you something to eat?
A. He did; yes, sir.
Q. Gave you beds?
A. He gave us beds; yes, sir.
Q. You stayed there that night?
A. We did; yes, sir.
Q. What time did you get up in the morning? Do you remember?
A. To the best of my recollection it must have been about six or seven o'clock.
Q. Did Rosenberg remain at the cabin or go away?
A. He went away.
Q. In whose company did he leave the cabin?
A. In George Aston's.
Q. After he left the cabin with him did you see him any more?
A. I did not.
Q. Did Aston return?
A. He did.

Q. Where did he start to go.
A. To get his dory.
Q. Where was Rosenberg going?
A. Rosenberg was going home to Marzovio.
Q. Did Aston return with the dory?
A. He did not; no, sir.
Q. How long was Aston gone that morning?

A. He was gone from about half past eight until ten, to the
524 best of my recollection.

Q. How long did you and Aston remain at this cabin after Rosenberg left it?
A. We remained there a period of about twenty-four hours after Mr. Rosenberg left, to the best of my knowledge.
Q. Did you have any conversation about where you should go to from there?
A. We did; yes, sir.
Q. Where did you talk about going to?
A. We was going to Belkofsky, on the mainland.
Q. Was that after or before Rosenberg left the cabin?
A. That was before and after also.
Q. Before he left what conversation, if any, was had between yourself or Aston and Mr. Rosenberg?
A. After Mr. Rosenberg made the expression that we never could reach Dutch Harbor in the dory Aston spoke up and asked him what he would take to take us to Belkofsky. He did not seem to pay much heed to the matter, and Aston then said he would give him his dory and some money. He did not say how much money.
Q. Did he say who would give him the money?
A. Yes, sir.
Q. Who?
A. He said I would give him the money.
Q. Did Rosenberg take you to the mainland?
A. He did not; no, sir.
Q. After he left what did you and Aston conclude to do or talk about doing?

525 A. After he left, after Aston returned to the cabin—he had left me at the cabin to pack up the goods—after he returned I had the goods wrapped up; they are in here now. I wrapped up the guns and what provisions we had, and also the two half blankets that we had. After he returned I had the bundles wrapped up. He said we could not get away that day in the dory. I unwrapped the bundle, and Aston said, "It will not do to take these guns along after we having told Mr. Rosenberg that we had no guns," and I said, "What will we do with them?" He said, "We can hide them here somewhere." I agreed to the matter, and then I wrapped the guns up, took them outside the cabin, and hid them in an old place where there had been an old cabin.

Q. The same place you hid them the night before?
A. No, sir; another place. I hid them under some earth. Aston asked me where I hid them.
Q. How long was that after you hid them?

A. About half an hour.
Q. Did you tell him?
A. I did.
Q. What did he then do?
A. He went and got the guns and brought them inside the cabin.
Q. What did he then do?
A. He said it would not do to hide the guns in that place; that they would be found; furthermore, that Rosenberg always looked around that place and would find these things.
Q. What did he do with the guns?
A. He took a screw-driver and took the rifle apart. While he took the rifle apart I took the shotgun apart. He wrapped them
526 up in a piece of tarpaulin and took them out and hid them himself.
Q. Where did he hide them?
A. Under the eave of the house.
Q. Of Rosenberg's cabin?
A. Yes, sir; under the eave of the right-hand side as you come out of the cabin.
Q. While you were there, or before you returned to Scott's camp (while you were at Rosenberg's cabin), did you have any conversation with Aston about any goods being cached anywhere, by him or by you?
A. I did not; no, sir. I had no conversation about any goods being cached, only when I intended to buy some provisions at Mr. Scott's; then he said he knew where there was plenty of provisions, and there was no sense paying the price Mr. Scott asked for provisions.
Q. Were you and he alone at the time?
A. I do not know. I think that after Mr. Scott made the proposition to sell me some provisions, I think Aston and myself stepped outside; to the best of my knowledge, I think we were alone.
Q. After you left Rosenberg's cabin on this trip that you speak of, where did you go from there—you and Aston?
A. You mean on the last trip?
Q. Yes.
A. We returned back to what I believe Mr. Rosenberg called the "Cove;" I can not give the name as correctly as he speaks it.
Q. How far was that from this cabin that you left?
527 A. About forty miles.
Q. How did you go—afoot, or in the dory?
A. We went afoot.
Q. Where was the dory left?
A. About a mile above Mr. Rosenberg's cabin.
Q. After your arrival there, where did you go?
A. We went down to another cabin that is across from the village of Marzovio; I think it is one of Mr. Rosenberg's cabins.
Q. How far from the last cabin that you speak about?
A. About sixty miles.
Q. Then where did you go from that place?
A. We went from there to a place called the Fishing Station, of the Alaska Cod Fishing Company.
Q. Who was in charge there?

A. A fellow by the name of Gaffney.
Q. That is what they call Dora Harbor?
A. Yes, sir.
Q. When you arrived there did you have in your possession either one of these watches I have shown you?
A. I did.
Q. Or any diamond pin or pins?
A. I did.
Q. Did you have any revolver in your possession?
A. I did.
Q. What was the size of the revolver?
A. A 41-Colt.
Q. A 41-Colt?
A. Yes, sir.

528 Q. When you arrived there what did you and Aston do?

A. When we arrived there that morning, we went in and told Mr. Gaffney our circumstances, and he gave us something to eat, and then we spoke to him in regard to receiving employment from him, and then he said that he did not know about hiring any stranger that came along, that though he could use more employees. He then said that he had heard some talk around; he did not say what it was. He furthermore said that he was scared to let any of the dories out for fear people would run off with them, and he would be charged with them.

Q. Did you make any arrangements about getting dories to use?
A. We did.
Q. What arrangements did you make?
A. He said he would let us have the dories if we would deposit thirty-five dollars each.
Q. Did you make the deposit?
A. Yes, sir.
Q. How much?
A. Sixty-five dollars.
Q. And obtained the dories?
A. Yes, sir.
Q. Did you take one and Aston the other?
A. Yes, sir.
Q. To what use did you put the dories after you got them? You and Aston.
A. We were in the labor of fishing.
Q. In what vicinity?
A. In that vicinity.

529 Q. How long had you been there prior to the time you were arrested?

A. We were there, to the best of my knowledge—I think it was about the 8th, or somewhere along there—to the 26th day of July.
Q. July, this year?
A. Yes, sir.
Q. On the day that—do you remember the time of day it was that you were arrested?
A. It was in the morning about—no, excuse me; it was in the afternoon, about three o'clock, I believe.

Q. At what place were you when you were first arrested?
A. I was in what was supposed to be a water-closet.
Q. How far was that from the place where you and Aston slept?
A. About twenty-five yards.
Q. Was there anyone else in the water-closet when you entered it?
A. There was.
Q. Who was it?
A. One of the fishermen.
Q. Did the fisherman say anything to you about any person, or arriving at the island, or coming from the beach?
A. He stepped out as I stepped in, and he said, "Here comes Mr. Benson and some of the survey men."
Q. Some of the survey men?
A. Yes, sir.
Q. After you were in the closet did you see Mr. Sullivan, ex-deputy United States marshal?
A. Yes, sir.
530 Q. Did he say anything to you while you were there?
A. He did. Yes, sir; he came to the door of the closet and stepped inside, I believe; then he saw me and jumped back as if he was surprised; then he stepped outside and seemed to be waiting. He mentioned something about being hungry; I told him to go to the cook house and get something to eat. In the meanwhile I asked him who he was. He said he was a deputy United States marshal—a revenue marshal of Alaska. He said, "I came after you." I said, "Did you." He said, "Yes, sir." I said, "What have I done?" He said, "I do not know what you have done, but I have come after you."
Q. Did you at any time while you were in this closet drop any watch or pin through the hole in the closet?
A. I did.
Q. Tell the jury why you did so.
A. The simple reason was that I had heard from Aston, my partner, that the goods had been stolen and that the parties we had been with had stolen the goods, and the other reason was that I had stolen the goods from the other persons.
Q. Did you have this watch and pin in your possession when you arrived at the fishing camp?
A. I did.
Q. Where did you get them?
A. I got them from Charley Rosenberg's hunting cabin.
Q. You occupied a bunk in this house about twenty-five yards from the closet, you say?
A. I did.
Q. Did you have any revolver in your bunk?
531 A. I did; I put it in my bunk the day before my arrest.
Q. From whom did you get that revolver?
A. George Aston.
Q. When you arrived at the camp you surrendered your pistol to Mr. Gaffney?
A. I did.
Q. Afterwards Aston handed you the revolver you afterwards had?

A. He did.

Q. That was in your bunk at the time that you were arrested?

A. It was; yes, sir.

Q. Did you ever at any time go with George Aston to Cape Lapin or about there?

A. I did not; no, sir.

Q. Did you ever tell him that you had any cache on or about Cape Lapin?

A. I did not; no, sir.

Q. Did you ever make any cache at Cape Lapin, or about there, of any goods or property of any kind?

A. I did not; no, sir.

Q. Did you ever, at any time, tell Mr. Aston, or George Aston, or Charles Ross, or whatever you call him, that you had robbed or stolen any property?

A. No, sir; I did not.

Q. Did you tell him that you had killed or attempted to kill any person?

A. I did not; no, sir.

Q. Did you, prior to the time when you left the boat "Arago," on June 10th, or at any time prior to that time, hear or have any
532 knowledge that Con Sullivan, or Mr. Rooney, or Florence Sullivan were prospecting or camped on Unimak Island anywhere?

A. I did not.

Q. Did you, before leaving the boat on June 10th at the watering springs, have any knowledge or information that anybody was camped or had been camped at the watering springs?

A. Yes, sir.

Q. What day was that?

A. On the 10th day of June.

Q. Did you before that?

A. No, sir.

Q. Had you ever been on this island prior to the arrival of the "Arago?"

A. No, sir; I never had been.

Q. Why had you—you speak in your testimony, Mr. Hardy, of having run away from the boat. Why did you run away from the "Arago?"

A. The general reason is that the captain did not suit me.

Q. You remember Judge Whipple's statement, do you?

A. I do; yes, sir.

Q. I ask you whether or not you made that statement?

A. I did; yes, sir.

Q. I will ask you do you remember the statement made before Judge Whipple, that after you made a statement at the preliminary hearing that you afterwards made a statement, an additional statement, at the jail?

A. I did.

Q. I will ask you under what circumstances you made that statement?

533 A. The reason were that he came up to the jail and ordered me to return to his office for the purpose of securing some information to arrest some other fellows, or get some points of me of other parties.

Q. Did you at any time aid or assist, or yourself carry away any goods, property, guns, or chattels of any kind from any camp on Cape Lapin, or about there?

A. No, sir; I did not.

Q. Do you know what became of the "Arago" after you left her?

A. I do; yes, sir.

Q. Of your own knowledge?

A. Yes, sir. After she got away up she pulled out into the stream about four miles, and anchored there that evening. Next morning she pulled out.

Q. Was that while you were aboard of her?

A. No, sir; after I had left her.

Q. How far out was she when you last saw her?

A. About ten miles.

Q. Is that the last time you have seen her?

A. Yes, sir; that is the last time I have seen her.

Q. Did you ever meet Aston before, immediately preceding the time when you entered into the service of the "Arago" in San Francisco?

A. I saw him on the ship about the 10th, I believe.

Q. Of what month?

A. Of April.

Q. You left on the 15th?

A. Yes, sir.

534 Q. On what ship?

A. The "Arago."

Q. Did you know him before that time?

A. No, sir; I did not know him. I saw him aboard of the vessel before, but did not know who he was.

Q. What name did you say he was known by on the boat?

A. Mr. Clark, the third mate, said his name was not Aston; that his name was "Charles Rose;" said he was a great chum of his, and had known him in Honolulu.

Q. You were taken aboard the "Manning" after your arrest?

A. I was.

Q. By Mr. Sullivan?

A. Yes, sir.

Q. At the time of your arrest how much money did you have?

A. Six hundred and eighty-five dollars and fifty-five cents.

Q. Did you have that much on your person, or was part of that with Gaffney?

A. I had $685.00 all told; I had $600.00 less $85.00 in my possession; $65.00 of the money was the money deposited with Gaffney.

Q. It was?

A. Yes, sir.

Q. What was the other money?

A. The other money was $600.00 I had in my possession; paper bills.

Q. Was that all of it?

A. That was the amount, except some foreign coins; some Filipino money.

535 Q. To whom was this money turned over?

A. It was taken by the man who claimed he was the United States marshal, Mr. Sullivan.

Q. Did he take all the money?
A. He did; yes, sir.
Q. Did you ask him to count the money when he received it?
A. I did; yes, sir.
Q. Did you ask of him any receipt for the money?
A. I did; yes, sir.
Q. What were his replies to each question?
A. His replies were, when I asked him to count the money, he said he would attend to the money himself; "I have got you in my charge." I said: "I am well aware of that." He said: "I will attend to this money myself."
Q. He kept it, did he?
A. Yes, sir. The time when I asked him for the money was in the presence of Mr. Gaffney. He did not give me one. He said he could take care of the money without giving me one.
Q. Are you acquainted with Lieutenant Landry, of the revenue cutter "Manning?"
A. No, sir; I do not know that I have ever met the gentleman before.
Q. Prior to your arrival on the schooner "Arago," had you ever been to this part of Alaska before?
A. I had not.
Q. Did you have any relatives, friends, or acquaintances living on Unimak Island, or in this part of Alaska?
A. I did not; no, sir.
536 Q. At the time that you were mustered out of the service in San Francisco, did you receive any discharge papers?
A. I did.
Q. Where are those papers?
A. My discharge certificate is in the care of my father.
Q. Where does he live?
A. In the State of Tennessee.
Q. At what point?
A. In the county of Lawrence; also in the town of Lawrence.
Q. Did you deliver them to him personally, or by mail?
A. By mail.
Q. From where?
A. The Presidio, San Francisco, California.
Q. Is that the military station there?
A. It is.
Q. I will ask you to look at this purse and state whether or not it is the purse in which you had any of this money at the time that you were arrested (plaintiff's Exhibit G)?
A. Yes, sir.
Q. Tell the jury when or where you had this purse and how long you have had it.
A. I have had it quite a while; I carried it from the islands with me.
Q. The Philippine Islands, you mean?
A. Yes; when we returned to this place I had some Filipino coins in it.
Q. To Alaska—to Unimak Island?
A. Yes, sir.

Mr. SULLIVAN. That is all.

537 Cross-examination:

Q. (By Mr. McGINN:) You say that you were born in the State of Ohio?

A. I was.

Q. In the year 1876?

A. Yes, sir.

Q. And resided there until 1897?

A. Yes, sir.

Q. And lived at that time at what place?

A. At Lexington County.

Q. In 1897 where did you go?

A. I enlisted in the Second Cavalry, U. S. A.

Q. Is that a regular or volunteer regiment?

A. It is a regular regiment.

Q. Who was the colonel?

A. Colonel Noyes.

Q. In what capacity did you enlist?

A. As a private.

Q. How long did you remain a private?

A. For a period of about ninety days.

Q. For how long a time did you enlist?

A. For three years.

Q. When were you appointed lieutenant?

A. On March 10th, 1898.

Q. March 10th, 1898?

A. Yes, sir.

538 Q. Is that not the date that you testified in your direct examination that you were mustered in the service of the Second United States Cavalry?

A. No, sir.

Q. It was March 10th, 1897?

A. Yes, sir.

Q. When you were mustered in as an officer?

A. No, sir.

Q. When were you mustered in?

A. March 10th, 1898.

Q. Did you not say that you were a private for ninety days?

A. I did.

Q. How do you figure it out that you were mustered in as an officer on March 10th, 1898?

A. For the simple reason that I was ordered to Nashville to stand examination as an officer.

Q. When did you become an officer?

A. I became an officer after a period of sixty days after I received my examination.

Q. In what regiment did you serve?

A. In the First Tennessee Volunteers.

Q. In what year?

A. 1898.

Q. You were mustered into the Regular Army of the United States?

A. I was not mustered in; I enlisted.

Q. Into the regular service?
A. Yes, sir.
Q. Into the Second Cavalry of the United States, on the tenth day of March, 1897?
539 A. I was.
Q. You remained as a private in that regiment for a period of about sixty days?
A. I did.
Q. Then what became of you?
A. I became a corporal.
Q. In what regiment?
A. In the Second United States Cavalry.
Q. How long did you remain a corporal?
A. Until the time that I stood my examination for a commission.
Q. When was that?
A. The tenth day of March, 1898.
Q. Where did you take your examination?
A. At Nashville, Tennessee.
Q. What were you doing at Nashville, Tennessee?
A. I was ordered there by the War Department to stand examination.
Q. When was that?
A. The tenth of March.
Q. Did you take your physical examination there?
A. I did.
Q. Were you an applicant for a commission in the Regular Army of the United States?
A. No, sir.
Q. In the Volunteers?
A. I was.
Q. Who ordered you there to take your commission?
A. The Secretary of War.
Q. What was his name?
540 A. Root.
Q. What time did he order you there for your examination?
A. I received my order about the 15th day of February.
Q. Of what year?
A. Of 1898.
Q. And he ordered you to Nashville to take your examination, and you took it and passed it?
A. I did.
Q. And you became a commissioned officer?
A. I did.
Q. In what regiment?
A. First Tennessee Volunteers.
Q. On what date?
A. The tenth of March, 1898.
Q. In what company?
A. Company B.
Q. Of the First Tennessee Volunteers?
A. Yes, sir.
Q. Of the United States of America?
A. Yes, sir.

Q. Do you not know, as a matter of fact, that all the officers of the volunteer army, who took part in the Philippines, were all appointed by the governors of the respective States, and that the President or Secretary of War had nothing to do with it—only the special officers, who were appointed by the Secretary of War?

A. No, sir.

Q. You say that you were an officer in the Tennessee regiment
541 on the 10th of March, 1898?

A. I did.

Q. Was the Tennessee regiment in existence at that time?

A. It was.

Q. Was it not a fact that the declaration of war between the United States and Spain was on the 21st of April, 1898, and is it not a fact that the call for volunteers was dated back and that the declaration of war was dated back to the 19th of April, 1898, and that the call for volunteers was made subsequent to that date?

A. No, sir.

Q. From where did you leave the United States and go to the Philippines?

A. From Tampa, Florida.

Q. Did you go with the Tennessee regiment?

A. I did. Went with one company of the Tennessee regiment.

Q. On what boat?

A. The "Belgian King."

Q. How did you go; what course did you take?

A. I am no navigating man; I can not tell what course I took.

Q. Don't you know what direction you went?

A. No, sir.

Q. Did you go around the Horn?

A. I tell you I can not tell the direction I went.

Q. How many miles?

A. I do not know.

Q. How long did it take you?

A. It took us 38 days.

542 Q. Did you come through the Straits of Gibraltar?

A. I do not know.

Q. You don't know what course you took?

A. I do not.

Q. Was the Tennessee regiment ever in San Francisco?

A. Yes, sir.

Q. Were you ever in Honolulu?

A. Yes, sir.

Q. When?

A. In '98.

Q. On your way to the Philippines?

A. Yes, sir.

Q. How long were you there?

A. Five days.

Q. With what regiment?

A. Third Battalion, Tennessee.

Q. Where were the other regiments?

A. They had gone on.

Q. Where did you leave when you went to Honolulu; from what point?

A. I left Tampa.

Q. How did you go there?

A. I do not know.

Q. How long did it take you to go to Honolulu?

A. About 15 or 20 days.

Q. From Tampa, Florida, to Honolulu?

A. Yes, sir.

Q. How many days more could it have been?

A. I could not say.

543 Q. Where did you camp when you arrived at Manila? The Tennessee regiment.

A. In the Walled City is where we stopped; where the First Battalion met the Second and Third.

Q. Who was colonel at that time? Who had been colonel?

A. There had been no colonel.

Q. Do you mean to tell me that the Tennessee regiment had no colonel?

A. I do.

Q. Is it not a fact that Smith was colonel of the First Tennessee Regiment? Is it not a fact that he came from San Francisco with the Tennessee regiment as colonel of that regiment?

A. He did not; he returned there, but he did not come there.

Q. When did he return to San Francisco?

A. After the Tennessee was mustered out.

Q. Is it not a fact that he died early in 1898; within three months after the Tennessee regiment arrived there?

A. Colonel Smith did not.

Q. Do you know if he had a boy in that regiment?

A. I do.

Q. What position did he occupy? Of what company?

A. Of Company A.

Q. Did he not occupy the position of sergeant-major?

A. No, sir.

Q. Did he become sergeant-major?

A. He was sergeant-major before he went there.

Q. Did you say that his father did not die in the Philippines?

A. No, sir; not to my recollection, he did not.

544 Q. How long did you remain at Manila?

A. We remained there thirty days.

Q. Where did you camp?

A. In the Walled City.

Q. Where was the Tennessee regiment camped in the Walled City?

A. Within the Walled City?

Q. Yes, sir; in what part—in what barracks?

A. In the barracks that were called "Santiago."

Q. In what part are they situated?

A. I tell you that we stayed in the barracks that went under the name of the "Santiago" barracks.

Q. In what part of the Walled City? Do you know where the palace is?

A. I do.

Q. Do you know where the general's headquarters was?

A. I do.

Q. Where was that?

A. The general headquarters of one division was in the Walled City.

Q. I mean where the general commander of the army had his general headquarters.

A. That was in Manila.

Q. Who was the major-general in command?

A. There was a couple.

Q. Well, I mean in Manila.

A. General Shafter.

Q. And you were an officer in the Tennessee regiment?

A. I was.

545 Q. And were you an officer in the First Tennessee all the time you were there?

A. I was—no, sir; not all the time I was in the Philippines.

Q. What other evolution did you make?

A. I went into the Eleventh Cavalry.

Q. When?

A. Somewhere in the month of October, I believe; I can not just call the date.

Q. Of what year?

A. 1900.

Q. Were you an officer in that regiment?

A. I was.

Q. What battalion?

A. I was not assigned to any battalion.

Q. In what company?

A. No company; I did not take any position in the troop at all.

Q. And were you not an officer?

A. I was, but was transferred to the southern islands, in the Signal Corps.

Q. Is the Eleventh Cavalry a volunteer association?

A. Yes, sir.

Q. Whom is at the head of that association?

A. Colonel King.

Q. Colonel King?

A. Yes, sir; Colonel King.

Q. As a matter of fact, was not Colonel Wallace at the head of that organization?

A. No, sir.

546 Q. You say that Colonel King was with the Eleventh Cavalry?

A. Yes, sir.

Q. The officers and privates did not associate together, did they?

A. No, sir.

Q. And the officers had clubs of their own?

A. Yes, sir.

Q. Where only officers were permitted to go?

A. Yes, sir.

Q. You met a great many officers there, did you?
A. No, sir; I did not stay in Manila long enough.
Q. How long did you stay in Manila?
A. About sixty days.
Q. Who, if anybody, was doing provost duty in the Walled City? What regiment?
A. Sixteenth infantry.
Q. In what month?
A. At the time that I arrived there; it was somewhere in April or May.
Q. Of what year?
A. 1898.
Q. April or May of 1898?
A. Yes, sir.
Q. Along about that date?
A. Yes, sir; to the best of my knowledge.
Q. Could it be as late as September?
A. I can not tell just the date when it was. It may have been in September; it might have been.
547 Q. 1898?
A. Yes, sir.
Q. Is it not a fact that the first troops did not arrive there until about the first of June?
A. No, sir.
Q. On the 17th day of March the Seventeenth Infantry arrived in Manila?
A. Yes, sir.
Q. Were they the first troops to arrive there?
A. No, sir; the marine service were the first to arrive there. They arrived some time in '98.
Q. How do you know that?
A. Because they were there when I returned to the place.
Q. When you returned?
A. Yes, sir.
Q. From where?
A. From Tampa?
Q. You do not know when you arrived there?
A. Well, I know something, not the day.
Q. When did you leave Tampa?
A. I left Tampa, Florida, about sometime in the fall; October or November.
Q. Of '97?
A. No; '98.;
Q. When did you arrive in the Philippines?
A. I arrived in the Philippines sometime in September or October. I can not give the exact date.
Q. In '98?
548 A. Yes, sir.
Q. In the latter part?
A. Yes, sir.
Q. When did the 17th arrive?
A. About the first part of '98.

Q. How early; do you know?
A. I do not know.
Q. Do you know whether or not the Oregon regiment was within the Walled City when you arrived?
A. No, sir.
Q. Do you know whether the Kansas regiment was there?
A. Not in the Walled City.
Q. Do you know whether the Minnesota regiment was there?
A. I do not.
Q. Is it not a fact that the Tennessee regiment was never camped in the Walled City of Manila; that they were on the Lunetta and were never in the Walled City?
A. No, sir.
Q. Is it not a fact that from the 13th of August, 1898, up to the month of March, 1899, that the Oregon regiment was doing provost duty in the City of Manila?
A. No, sir.
Q. How much money did you say you received as a second lieutenant?
A. I received in the foreign service $115.00 per month.
Q. How do you figure it?
A. For the simple reason that you get paid more for foreign service.
Q. How much?
549 A. Twenty per cent.
Q. How much does a second lieutenant receive in the United States?
A. $90.00.
Q. How much is twenty per cent of ninety dollars?
Mr. SULLIVAN. We object to that question.
(No ruling.)
Q. Ninety dollars and eighteen dollars is one hundred and eight dollars, is it not?
A. According to figures, it is, but I have another point to bring in to show you that there is more money to be attached to that——
Q. How?
A. For the simple reason that a man is allowed percentage on his money; but say that when a lieutenant enlists, he gets every year that he is in the service is twenty per cent more; for every year that he serves with the service. If he serves with the regular service as a private, and he receives his commission in a volunteer or a regular service, he gets twenty per cent added to him for every year that he serves in the service.
Q. Is it not a fact that the regular pay of a second lieutenant in the United States Army is one hundred dollars?
A. No, sir.
Q. Is it not a fact that the salary that a second lieutenant receives in the Philippines is one hundred and twenty dollars? Twenty per cent increase for foreign service?
A. No, sir.
Q. Is it not also a fact that there is no increase in pay until
550 he has served for a period of five years?
A. No, sir; since 1898 there has been a bill passed that all soldiers under the American flag receives a percentage on each year that

they serve after one year. A private serves one year before he receives that bounty upon his money as interest; then he receives one dollar.

Q. Is it not a fact that the pay of a private is $15.60?
A. In time of war it is; yes, sir.
Q. You remained in the Phillipines how long?
A. From 1898 until 1901.
Q. Then you returned to the United States?
A. Yes, sir.
Q. With what regiment?
A. With no regiment.
Q. Were you mustered out in the Philippines?
A. No, sir; I came with the hospital detail.
Q. The hospital detail?
A. Yes, sir.
Q. And in the hospital service?
A. No, sir.
Q. Did you not say that you returned with the Red Cross?
A. No, sir; I was sick.
Q. Did you do any service in the Eleventh Cavalry?
A. No, sir.
Q. How long had you been in the Eleventh Cavalry?
A. I had not been in the Eleventh Cavalry at all. I was mustered in but was transferred to the signal corps on the island of Negros.

551 Q. Who was in command of the signal corps?
A. I was.

Q. Well, who was the general commander?
A. General Hughes.
Q. The Tennessee Regiment was located at Illoilo?
A. Yes, sir.
Q. On what island were you in command of the signal corps?
A. On the island of Negros.
Q. How long?
A. Well, it was from—I guess it was about three or six months.
Q. When was that?
Q. That was in 1901; part of the time.
Q. After the Tennessee Regiment had been mustered out? 1901?
A. Yes, sir.
Q. This year?
A. Yes, sir.
Q. You are positive?
A. I was in command of the signal corps when I returned to the United States.
Q. When did you first go in command of the signal corps at Negros?
A. In October.
Q. How much of a regiment did you have with you?
A. Myself and ten men.
Q. Were there any other troops on the island at that time?
A. There was.
Q. What part of the island did you go to?
A. All over the island.

552 Q. With whom?
A. With my detachment.

Q. How many men with you?
A. Ten.
Q. Did any other troops accompany you?
A. When I arrived there there was the 44th volunteers.
Q. You arrived in San Francisco, you stated, on the 28th day of March, 1901?
A. I did.
Q. And you were mustered out of the service of the United States at that time?
A. I arrived in San Francisco, California, on February 10th, 1901.
Q. The tenth?
A. Yes, sir.
Q. How much money did you have with you when you were mustered out as a volunteer of the Tennessee regiment?
A. I do not know; I had quite a few hundred.
Q. How many?
A. I can not tell.
Q. Can not you approximate the amount?
A. I had probably twelve or fourteen hundred dollars.
Q. Where was the money?
A. Part was sent home to my father.
Q. How much had you with you?
A. About four hundred dollars on my person.
Q. When you went into the Eleventh Cavalry?
A. I did not have any.
553 Q. Did you have any money in Manilla?
A. I had some with the United States paymaster.
Q. How much?
A. Several hundred dollars.
Q. Did they pay you every month?
A. They pay every month or two months, or whenever the paymaster gets around.
Q. You were paid once in every two months?
A. About every month.
Q. When were you mustered out of the service?
A. For good, do you mean? I was mustered out on the 28th day of March, 1901.
Q. Were you ever at Alcatraz?
A. Yes, sir; I was there visiting.
Q. Alcatraz is an island in the harbor of San Francisco?
A. I have been there.
Q. What were you doing?
A. I was there on business.
Q. Were you confined there as a military prisoner?
A. No, sir.
Q. Do you know J. C. Scott?
A. I know one Scott who was here as a witness against me on the stand.
Q. Do you know Frank W. Lee?
A. I do not; no, sir.
(Mr. Lee is shown to prisoner.)

Q. Have you ever seen this man?
A. I have seen him.
554 Q. Where have you seen him?
A. In the Philippine Islands.
Q. On what part?
A. In Manila. He used to be an engineer on the Manila and Perduka Railroad.
Q. Did you ever see him at Alcatraz?
A. No, sir.
Q. Is it not a fact that you were confined at Alcatraz military prison from October, November, December, and January, and up to the latter part of March of this year?
A. No, sir.
Q. Is it not a fact that Mr. Lee was there at this time?
A. No, sir.
(Mr. Tricker shown to prisoner.)
Q. Have you ever seen this man before?
A. No, sir; I have never seen that man before.
Q. Did you ever see him in the Philippines?
A. No, sir.
Q. Did you ever see him at Alcatraz?
A. No, sir.
Q. Is it not a fact that you were confined at Alcatraz when he was?
A. No, sir.
Q. During the fall of last year and early part of this year?
A. No, sir.

The COURT. Gentlemen of the jury, you may have a recess for five minutes; remembering the admonition that I have given you not to discuss this matter with anybody.
555 After recess. All present.
(Mr. Wm. C. Bowen showed to prisoner.)

Q. Look at that man and state whether or not you have ever seen him before.
A. No, sir; I never did.
Q. Did you ever see him in San Francisco?
A. No, sir.
Q. Ever see him in the Philippines?
A. Not that I know of.
(Mr. Charles Schumer showed to prisoner.)
Q. Have you ever seen that man before?
A. No, sir.
Q. How much money did you have when you were mustered out of the service?
A. Well, I had $1,800.00.
Q. What did you do with it?
A. What do you mean? How much I received from the paymaster or when I was mustered out?
Q. How much when you were mustered out?
A. I had $1,875.75.
Q. How much from the paymaster?
A. That is what I am talking about.

Q. What did you do with it?
A. I spent some and had some on my person when I was arrested.
Q. How much did you spend?
A. I do not know.
Q. Was the money that you had on your person when you were arrested what you had left of your eighteen hundred and
556 seventy-five dollars and seventy-five cents?
A. No, sir; I sent some to my father.
Q. How much?
A. About five hundred dollars.
Q. What did you do with the rest of it?
A. Spent it in San Francisco.
Q. Between what time?
A. Between March and April.
Q. How much money did you have on you when you went aboard the schooner "Arago" in San Francisco?
A. I had seven hundred and forty-two dollars and sixty-five cents.
Q. What kind of money did you receive from the paymaster?
A. I received different kinds. I received—mostly all of it was in bills; twenty-dollar gold certificates some of it were. Some of it were in twenty-dollar greenbacks.
Q. What kind did you send to your father?
A. The same kind.
Q. How did you send it?
A. By register; some by post-office order and some by money order.
Q. How many bills did you send through the mail?
A. I can not tell.
Q. How much by money order?
A. One hundred dollars, and one hundred and fifty dollars at different times.
Q. How many money orders did you send?
A. That is pretty hard to tell.
557 Q. Can not you form an idea?
A. I can, but it would not be a true one.
Q. How near?
A. I can not come near.
Q. How large were they?
A. One hundred, and one hundred and fifty dollars, and two hundred dollars.
Q. Have you ever sent a money order for two hundred and fifty dollars to your father?
A. I did.
Q. What kind was it?
A. A first-class order.
Q. A post-office order?
A. Yes, sir.
Q. For two hundred and fifty dollars?
A. Yes, sir.
Q. Did you send it from the same offices that you received the orders?
A. Yes, sir.
Q. Where did you address it to?
A. Lawrence County, Tennessee.

Q. What was the name of the town?

A. Lawrenceburg.

Q. When you were aboard the fishing schooner "Arago," you had seven hundred and forty-two dollars?

A. I did.

Q. What kind of money was that?

A. It was paper money.

558 Q. How did you carry it at that time?

A. In a pocketbook.

Q. Where is that pocketbook?

A. It was destroyed. It got wet and was good for nothing, so I threw it away.

Q. When did you throw it away?

A. I can not tell. I threw it away some time when I was on Unimak Island.

Q. After the 10th of June?

A. Yes, sir.

Q. How many days after that?

A. I can not tell.

Q. What kind was it?

A. It was bought in the Philippine Islands. It was known to be a Spanish pocketbook.

Q. Can not you describe it?

A. Yes, sir; it was a pocketbook about so long and was sewed around the edge with what the Filipinos call bamboo. It had pockets in to put different qualities of money in.

Q. You have been accustomed to handle paper money before that time?

A. Yes, sir.

Q. You had considerable experience with paper money?

A. Yes, sir; the same as any other man would.

Q. There was a good deal of paper money over in the Philippines, was there?

A. There is a lot over there; yes.

Q. You used paper money in Ohio?

559 A. I did; yes, sir.

Q. You knew that you were going up to fish, did you, when you were aboard the "Arago?"

A. I knew I was going up to fish, with the intention of fishing in one way.

Q. Did you not know that you were very apt to go away?

Mr. SULLIVAN. We object.

Q. Was this a waterproof pocketbook that you had?

A. No, sir.

Q. Don't you know, as a matter of fact, that you can not get a money order for more than one hundred dollars at any post-office in the United States?

A. You can get one for just as much money as you want.

Q. When did you arrive in Behring waters on the schooner "Arago?"

A. On the 18th day of May.

Q. Aston was aboard the boat that you were on?

A. He was.

Q. Did you at any time, while you were aboard the boat, show him the money that you had?

A. I think I did.

Q. What amounts did you ever show to him?

A. I do not think that I ever showed him any particular amount. I guess he saw all the money that I had on my person.

Q. Did you ever tell him you had any money aboard the "Arago?"

A. I did.

Q. You and Aston were partners aboard the "Arago" were you not?

A. Just as much as any other.

Q. What day was it that Aston left the fishing schooner "Arago?"

560 A. On the 28th day of May.

Q. How do you remember that date?

A. Because by the captain and the log of the boat which the detail of the log of the boat is put down from day to day by the captain, to accept the fish.

Q. Was that on the 28th day of May that he left?

A. On the 28th.

Q. Did you not testify in your direct examination that it was the 29th day of May?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. When did you examine that log?

A. I looked at the board, what the day was, copied from the log every day.

Q. When did you see that Aston left, on the 28th?

A. I saw the date he left.

Q. The day he left?

A. Yes, sir.

Q. When did you next see Aston?

A. On the tenth day of June.

Q. You say that the "Arago" remained in the vicinity of Snapper Island from the 25th to the 29th day of May?

A. Yes, sir.

Q. Then where did it go?

A. It went to the northward of Snapper Island.

Q. How long did it remain there?

A. Long enough for a boat to go ashore.

561 Q. How long did it remain there?

A. I can not tell just how long.

Q. When did you first leave the "Arago?"

A. The first day I left the "Arago" for shore was the 29th of May.

Q. Did you not testify in your direct examination that it was the 30th of May?

A. No, sir.

Q. Who accompanied you when you went ashore at Snapper Island?

A. The first and second mates and two fishermen, besides myself.

Q. What were you looking for?

A. Looking for Aston.

Q. Why?
A. Because the captain directed us to.
Q. You did not find him?
A. No, sir.
Q. You returned to the boat?
A. I did.
Q. When did you next leave the boat?
A. We left the boat on the 30th day of May.
Q. Where did you go then?
A. We went ashore at False Pass.
Q. Looking for Aston?
A. Yes, sir.
Q. Did you see him?
A. No, sir.
Q. What did you do?
A. We came back to the ship and reported that we could not see him.

562 Q. What time did you return to the boat that day?
A. Some time in the evening.

Q. Did you ever come ashore after that looking for Aston?
A. No, sir.
Q. Was there any other person ever went ashore looking for Aston?
A. No, sir.
Q. The last time you went was on the 30th?
A. Yes, sir.
Q. When was it that you saw this boat going up the coast eastward with this dory that you speak of?
A. I believe it was on the 10th day of June. The——
Q. The day that you left?
A. Yes, sir. No; I am mistaken; I saw it on the ninth day of June.
Q. How many men were in that dory?
A. There were three.
Q. Did you recognize any of them?
A. No, sir; there were two dories and three men.
Q. Did the captain see it?
A. Yes, sir.
Q. Did you call his attention to it?
A. He called my attention to it.
Q. You had been ashore twice looking for Aston, and why did you not go after this boat to see if it was Aston?
A. For the reason that the captain gave him up and said that he guessed he had left the ship.
Q. Was it not a fact that you went ashore for the purpose of getting the dory more than for Aston?

563 A. It was for Aston.

Q. And this day you saw a dory that you thought was Ashton's and you never went after it?
A. No, sir.
Q. You left the boat on the 10th day of June?
A. I did.
Q. For Cape Lapin?
A. Yes, sir; for the watering springs.

Q. Who was with you?

A. First Mate Johnson, Second Mate Felix, and Third Mate Clark, a fellow by the name of Laurie, whose last name I do not know; several whose names I do not know; Charley was one of them.

Q. What time did you leave the boat?

A. Four o'clock in the morning.

Q. What time did you arrive at shore?

A. I can not tell to the certain hour.

Q. About what time?

A. About nine o'clock, I believe.

Q. Nine o'clock in the morning?

A. Yes, sir; it may not have been more than eight o'clock.

Q. You say you saw a tent on the beach?

A. Yes, sir.

Q. What kind of a tent was it?

A. I did not take particular notice.

Q. How far away?

A. I did not notice.

Q. Did you go into the tent?

A. No, sir.

564 Q. Did you make any examination?

A. No, sir.

Q. Did any of the members of the party make an examination of the tent?

A. I think the first mate did.

Q. When you came there did you have any rifle of any kind?

A. I did not.

Q. Did you return to the "Arago?"

A. I did.

Q. Did you and the mate go back into the mountains after a fox?

A. On the first trip we did.

Q. When was the first trip?

A. The first trip was about four o'clock in the morning.

Q. You say that you arrived at about nine o'clock?

A. Yes, sir; at about nine o'clock.

Q. Who, if anybody, was left aboard the boat, the schooner, when you came to Cape Lapin?

A. The captain and the dressing gang.

Q. How many men?

A. There were about five men left aboard the schooner.

Q. Did you take any arms or ammunition?

A. No, sir.

Q. No rifle of any kind?

A. No, sir.

Q. Did you and the mate go back into the mountains in search of bear or foxes?

A. We did not go into the mountains; we went on the hill and ran a fox.

Q. Did you try to catch it?

565 A. Yes, sir.

Q. Did you return to the boat with the men?

A. I did.

Q. Did you go to the "Arago?"
A. I did.
Q. With the rest of the men?
A. Yes, sir.
Q. Was anybody left ashore?
A. No, sir.
Q. How long did you remain aboard the "Arago?"
A. We left at about 10.30.
Q. What did you carry this time?
A. The same as before—four empty barrels.
Q. Did you have any arms?
A. No, sir.
Q. Any provisions?
A. No, sir.
Q. What kind of wearing apparel had you?
A. I had overalls on—a cap and an overall jumper on.
Q. Had you seen any provisions around this tent?
A. Yes, sir.
Q. When?
A. When I landed there.
Q. The first time?
A. Yes, sir.
Q. Did you have a watch then?
A. No, sir.
Q. Where did you see the provisions?
566 A. On the outside.
Q. What kind?
A. Nothing but flour.
Q. No names on them?
A. No, sir.
Q. You say that you left the "Arago" about half past ten the second trip?
A. Yes, sir.
Q. Who accompanied you?
A. The same gang that accompanied me the first time.
Q. How long did you remain on the shore?
A. Until I was arrested.
Q. Did you leave then?
A. I did.
Q. On what pretext?
A. On the pretext of running away from the ship.
Q. Did you not tell them that you had lost a glove?
A. I did.
Q. You used that as a pretext for getting away?
A. As an excuse; yes, sir.
Q. Did you stay at this tent?
A. No, sir.
Q. You went right on?
A. I did.
Q. And did not intend to return to the boat?
A. No, sir.

Q. That was the first time you had been on Unimak Island?
A. The first time at that place.
567 Q. When were you there before?
A. At False Pass, looking for Aston.
Q. How long did you remain?
A. About twenty minutes.
Q. Did you see anyone there?
A. I did; at a distance—I saw some tents.
Q. How far is that from Cape Lapin?
A. About fifty miles.
Q. When you went in search of your glove where did you go?
A. I went to a cabin called Charley Rosenberg's hunting cabin.
Q. How did you find this cabin?
A. I just ran onto it.
Q. You say that you left that boat without any provisions or clothes and went on this desolate island of Unimak, and took your chances of living?
A. I did.
Q. Where did you expect to eat?
A. I expected to eat at a settlement when I got there.
Q. What settlement?
A. At Marzovio.
Q. Had you ever been there?
A. No, sir; I heard the Captain talk about it.
Q. What did he say?
A. He said that there was a town at False Pass.
Q. What time did you arrive at Charley Rosenberg's cabin?
A. In the evening about four o'clock.
Q. Where is that cabin in reference to the cabin where you had
568 hidden these guns?
A. It is the same cabin.
Q. How many miles from Cape Lapin?
A. In my estimation, about fifteen miles.
Q. You arrived there at what time?
A. About four o'clock in the evening.
Q. Who was present at that time?
A. Man named Jack.
Q. What kind of a looking man was he?
A. He was a tall man; he was a smooth-faced man about my size.
Q. Did he weigh as much as you?
A. Yes, sir.
Q. What color was his hair?
A. I think it was light.
Q. How was he dressed?
A. He was dressed of overall stuff.
Q. What kind of shoes did he wear?
A. He had on boots.
Q. What kind?
A. Sea boots.
Q. Leather?
A. No, sir.

Q. Rubber?
A. Yes, sir.
Q. How was the other man dressed?
A. He was dressed in overalls and sea boots.
Q. What was his name?
A. His name was John.
569 Q. What was his other name?
A. I do not know.
Q. How tall was he?
A. A tall slim man.
Q. What kind of a looking man was he?
A. He had a mustache.
Q. What color?
A. Sandy.
Q. What color was his hair?
A. I did not pay particular attention.
Q. What was the other man's name?
A. I do not know.
Q. What kind of a looking man was he?
A. An old heavy-set man; a kind of small man.
Q. How was he dressed?
A. In common ordinary dress; I think he had on overall stuff.
Q. What was the color of his hair?
A. I do not know.
Q. Was he smooth shaved?
A. I believe he was.
Q. You don't know just exactly how he did look, do you?
A. No, sir; not exactly.
Q. Aston was also there, was he?
A. He was.
Q. Were they all there when you arrived?
A. No, sir.
Q. Which one was there?
A. Jack.
570 Q. Where was he when you got there?
A. Outside of the cabin.
Q. What did he say?
A. He asked me who I was and where I came from. I told him I had run away from the "Arago." He asked if I wanted something to eat.
Q. What did you say?
A. I said, "Yes, sir."
Q. Did you go into the cabin to eat?
A. I did.
Q. Who cooked the food?
A. He did.
Q. Then what did you do?
A. I ate my supper.
Q. Then what did you do?
A. I got up and went outside.
Q. Where did you go?
A. About twenty feet from the cabin.

Q. Was he with you?
A. He was.
Q. What did you do?
A. I looked for some other parties that was coming.
Q. From what direction were they coming?
A. From the same direction I came from.
Q. What direction was that?
A. From the south.
Q. Did you come from the south?
A. To the best of my recollection.
571 Q. And these three men were coming from the same direction?
A. They were.
Q. Were they carrying anything with them?
A. They were.
Q. What?
A. Rifles.
Q. How many rifles?
A. There were two.
Q. Who was carrying the rifles?
A. Jim and the other man.
Q. What was Aston carrying?
A. He was carrying a shotgun.
Q. Did you go to meet them?
A. No, sir.
Q. What was said and done when they came up?
A. Aston came and shook hands and wanted to know how in the name of sense I got there. I said I had run away from the "Arago."
Q. What else did he say?
A. He said he would go in and have supper and then come out and have a talk.
Q. You were about twenty feet from the cabin when you saw these men?
A. I do not know whether it was twenty feet.
Q. Well, about that distance?
A. It may have been twenty or less.
Q. How far were these men when you first saw them?
A. About a mile.
Q. Who saw them first?
572 A. Jack; he had the glasses.
Q. What kind of glasses?
A. Field glasses.
Q. You say Aston shook hands with you and said he would go in and have supper and then have a talk with you?
A. Yes, sir.
Q. Did you go in with him?
A. I did a few minutes after he went in.
Q. Had you had supper?
A. I had my supper.
Q. After supper what occurred?
A. Aston and I went to the rear of the cabin.
Q. What did you do?

A. We had a conversation.
Q. What did he say?
A. He told me about the other parties.
Q. What did he say about them?
A. He said they had left the fishing schooner "Dove;" he said they were bad people and had run away from the fishing schooner "Dove."
Q. What reason did he give for saying that they were bad?
A. He did not give any reason at that time.
Q. Did he tell you that night about any crime having taken place?
A. No, sir; I think not. He told me they were pretty bad people.
Q. Is it not a fact that he told you they had committed a crime?
A. He did the next day.
Q. Did you not testify in your direct examination that he told you there had been a murder committed, at that time?

573 A. No, sir.

Q. Did you not testify in your direct examination that he told you he would tell you something if you would keep still and that you told him you would?
A. Yes, sir.
Q. Then he told you that these three people had robbed somebody and that these provisions they had in the cabin were those they had taken from the people? Did you not say that he told you that night at the rear of the cabin that these people had stolen the property?
A. Yes, sir; but he did not say that the crime of murder had been committed.
Q. Did he not tell you that they had stolen these provisions?
A. He did.
Q. Is not that a crime?
A. Yes, sir; it is a crime.
Q. What else did he say about these people?
A. He said they had a lot of provisions and where they had obtained them.
Q. Where did he say they had obtained them?
A. He said they had robbed some parties.
Q. Did he tell you where they had robbed them?
A. No, sir; he said they had robbed some parties and took their provisions and stuff; that they also had lots of provisions and intended to go to the mainland and get away, and he furthermore told me that we had better get off that island, because he said these people were bad people.

574 A. I said, "Why so?" I said, "I have not committed any crime, and why should we try to make our get away?" He said, "You don't know what I do. The best thing you can do is to take my advice."

Q. Did you say you would take it?
A. I did.
Q. After you heard his full story did you become satisfied that these were pretty good people to keep away from?
A. I did not give any sight to the affair. I had made up my mind to go with Aston.
Q. Were you afraid of these men?
A. No, sir.

Q. Did Aston appear to be afraid of them?
A. No; he did not say anything.
Q. Did you hear these people say they would plant you?
A. I think I heard a sketch of it that night.
Q. What did you hear them say?
A. I heard them talk about planting somebody in the cabin, but don't know whether it was about me.
Q. Did you not make a statement, or testify before Mr. Whipple, that you had supper with these men, and that you heard a conversation that night; that these men and Aston had a talk together in the cabin that night that was to the effect that if you were not all right they would plant you?
A. I do not remember that I said that they intended to plant me; but I heard them say that if he was not all right they would make him all right.
Q. Who do you think they referred to?
A. I thought they referred to me.
575 Q. Were you afraid that any harm would happen to you from these men?
A. I thought there might.
Q. From the conversation that you had with Aston, you then became of the opinion that these men were pretty bad men?
A. I did.
Q. What, if anything, did Aston say to you that night, in addition to what you have already stated?
A. What did he say that night?
Q. Yes, sir.
A. Well, he said the best thing we had better do was to get away from there, and advised me to take his advice, and furthermore said what he would take.
Q. What did he say he would take?
A. He said he would take the blankets.
Q. This is the conversation you had with Aston on June 10th?
A. Yes, sir. He said he would take a blanket and provisions, and also that he had received some money from these people to buy a rifle at Marzovio. He also requested me to take the 30–30 Marlin rifle and several other things.
Q. Are those the articles?
A. Yes, sir.
Q. What did he say he would take?
A. He said he would take a shotgun and blanket and some provisions. He also had on him a 44 Colt revolver.
Q. Did he show you a watch?
A. He did.
576 Q. Did he state where he got it?
A. I do not remember.
Q. Did you ask him where he got it?
A. I do not think I did.
Q. Did you not know that he did not have one aboard the "Arago?"
A. I did not know.
Q. Did he make any remarks about it?
A. No, sir; I do not think he did.

Q. Was not that the night that you arrived at the cabin that you and Aston proposed to steal these things from the people—the rifle, shotgun, blankets, and provisions?

A. Yes, sir.

Q. Did you think that was the right thing to do?

A. I did not think it was the right thing, but after he told me how they had received them I was tempted.

Q. Did not they take you in and feed you?

A. Yes, sir.

Q. And you immediately turned around and entered into a proposal with Aston to steal what they had?

Mr. SULLIVAN. We object to that question.

The COURT. Objection will be sustained.

Q. How long did you and Aston remain in the vicinity of the cabin?

A. I can not tell; may be until seven or eight o'clock; may be not so late; it may be later.

Q. How long were you in conversation?

A. I can not tell just how long.

Q. You went into the cabin after that?

A. I did.

577 Q. Did you return together?

A. Yes sir.

Q. Who was in there at that time?

A. Two other parties.

Q. Who were they?

A. The parties I spoke of.

Q. Who were they?

A. One was Jim; I did not know the other.

Q. Where was the other one?

A. He was outside.

Q. What was said there that night?

A. There were several things said.

Q. What were they?

A. There was one thing said, about Aston going after a rifle; another about moving onto the mainland, and where they would go.

Q. How many rifles had they there?

A. We had two rifles?

Q. A shotgun?

A. Yes, sir.

Q. Three revolvers?

A. Yes, sir.

Q. They were going to send after another?

A. Yes, sir; after a 45–70, for the reason that these other guns were too small.

Q. Did they show you anything that night?

A. Yes, sir; they showed me some papers; they looked to me like a business form, but I could not see what they were.

578 Q. Did they look like printed papers?

A. Yes, sir.

Q. Was there any writing on the papers?

A. Yes, sir.

Q. Did you see writing on the papers?
A. I did.
Q. What did it say?
A. I was not close enough to read it.
Q. Did you see any names?
A. I guess I saw some, but was not close enough——
Q. How long did you remain in the cabin that night?
A. Until the next morning.
Q. Who got up first?
A. I do not know. I was woke up before breakfast was ready.
Q. Were they all at breakfast?
A. Yes, sir.
Q. The five of you?
A. Yes, sir.
Q. Where did you go?
A. Aston and I went hunting.
Q. What did you carry?
A. That 30–30 Marlin rifle.
Q. What did Aston carry?
A. The double-barrelled shotgun.
Q. Did you carry a revolver?
A. No, sir.
Q. Did these people let you have the rifle and shotgun?
A. Yes, sir.
578½ Q. How long were you out hunting?
A. We were out the biggest part of that day, I think.
Q. What, if any, conversation did you have with Aston that day?
A. I had a conversation that consisted of several different things.
Q. State what they were.
A. After we got up to the summit where the deer was, Aston asked me what I intended to do. I told him that I did not know. He then spoke about getting away. He said, "Do you intend to go away?" I said, "I do not intend to stay here." Then he told me that there had been a murder committed on the island, and that there would be revenue cutters in there.
Q. Was there one there at that time?
A. No, sir.
Q. Had there been one there?
A. Not to my recollection.
Q. Were you looking for a revenue cutter at that time?
A. I was not.
Q. Did you not state in your examination that Aston stated that they were looking for one?
A. I did.
Q. What did you say to him in regard to that?
A. I said that I had not committed any crime. I said, "Have you committed a crime?" He said, "No." I said, "What are you scared at?" He said, "If there is a revenue cutter coming in here we will all be pinched."
Q. Did he tell you how many murders had been committed?
A. He did not.
578¾ Q. Did you go back any more to this cabin?

A. I did.
Q. Did you remain at the cabin that night?
A. Yes, sir.
Q. The whole of that night?
A. I did; yes, sir.
Q. What day was that?
A. That was the eleventh day of June.
Q. You stayed there the night of the eleventh, night of the 12th, and the night of the 13th and the 14th?
A. I did; Aston did not.
Q. When did Aston leave?
A. The 14th.
Q. Where for?
A. For Marzovio.
Q. What did he carry with him?
A. A shotgun, a .44 Colt revolver, a blanket, and some provisions.
Q. You still remained there?
A. I did until the 15th.
Q. Did they say anything about taking this stuff when he left?
A. No, sir; they gave him the stuff.
Q. How much provisions did he have?
A. He did not have much.
Q. About how many days?
A. About five days; he had some baking powder.
Q. Did he tell the people that he was not going to return?
A. No, sir; he had thirty dollars of the people's money besides the money that he had on his person.
579 Q. You stayed how long after Aston left?
A. One day.
Q. When did you leave?
A. On the night of the 15th.
Q. What time of the night?
A. About two o'clock in the morning.
Q. Where were the rest of these men when you left there?
A. They were asleep.
Q. What was the size of the cabin?
A. About a 15 by 8 or may be 10.
Q. An eight by fifteen?
A. Yes, sir.
Q. Where did these three men sleep?
A. Two of them slept on the bed; two of them slept on the floor.
Q. Where did you sleep?
A. At the end, with my head towards the table.
Q. On the floor?
A. Yes, sir.
Q. You got up on the morning of the 15th at 2 o'clock?
A. Yes, sir.
Q. Did you leave there?
A. Yes, sir.
Q. Did you disturb any of these people?
A. No, sir.

Q. What did you take with you?

A. A 30–30 Marlin rifle, a .44 Colt revolver, a sack that contained several articles.

Q. What was in the sack?

580 A. Razors, hair clippers, knives.

Q. Were there any watches in it?

A. Not in the sack; no, sir.

Q. You are sure of that?

A. Yes, sir.

Q. You have examined this statement that you made before United States Commissioner Whipple?

A. Yes, sir.

Q. Is it a truthful statement?

A. Part of it is.

Q. Is it not all true?

A. To the best of my knowledge it is.

Q. "I left the cabin where the three parties were; don't know their names. The oldest one, that seemed to be the boss, was named 'Jack.' That morning about two o'clock I went to leave. I took with me a bag which I supposed belonged to these fellows, and the bag had in it the stuff. It had in it two gold watches, some razors and knives—don't know how many—and some other little trinkets." Did you not make a statement before Judge Whipple to that effect?

A. I made a statement that there was a bag that had two gold watches in it, but it was not in this bag.

Q. What bag was it?

A. The bag that had the jewelry in it was left there.

Q. What jewelry was that?

A. The two watches and the pin.

Q. Was there other jewelry there?

581 A. Yes, sir.

Q. What kind?

A. There was a diamond pin there.

Q. Were there any nuggets there?

A. No, sir; there was a pin there made of some stuff out of a mine.

Q. What did you do with the diamond pin?

A. I did not have it. One of the other fellows had it pinned on his coat.

Q. This bag that you took from the cabin that night—did it have any gold watches in it?

A. No, sir.

Q. Did you not state to Judge Whipple that the bag that you took from that cabin that night had two gold watches in it?

A. Not that night. I told him that a bag on the table had two gold watches in it and a diamond pin.

Q. Did you not make this statement: "On the morning, at two o'clock, when I went to leave, I took with me a bag which I supposed belonged to these fellows, and the bag had in it the stuff. It had in it two gold watches and some razors." Did you not make that statement?

A. If I made that statement I made a mistake.

Q. That is not true?

A. There were two gold watches in a bag. They were in a bag setting on the table in a box.

Q. When did you have that bag?

582 A. I never took the bag. I took the gold watches out of it.

Q. That was the gold watch and the pin that were offered in evidence here?

A. Yes, sir.

Q. The ones that you threw away when you were arrested?

A. Yes, sir.

Q. Did you take a revolver.

A. Yes, sir.

Q. What else?

A. The revolver, rifle, watch, and pin and some razors, a pair of nippers or two; there are several articles in the bag.

Q. Is there anything more that you remember having taken from there?

A. No, sir.

Q. Did you have any ammunition?

A. Yes, sir.

Q. Where did you get them?

A. Off the table; there were two boxes of it, also a belt hanging up against the wall that was full of ammunition.

Q. You took them all that night?

A. Yes, sir.

Q. Did you light a lamp?

A. No, sir.

Q. You did it in the dark?

A. There was a light from the window.

Q. You did not wake anybody up?

A. No, sir.

Q. The rifle was lying on the floor between the two fellows who

583 were lying on the floor.

A. I just picked it up and walked out.

Q. From there you went to Scott's camp?

A. I did; yes, sir.

Q. And arrived there on what date?

A. I can not state just what date it was.

Q. About what date?

A. It might have been the 17th, the 18th, or it might have been the 20th.

Q. What time of night did you arrive there?

A. It was about ten o'clock in the evening.

Q. What did you say when you got to the tent that evening?

A. I asked them if I could get something to eat. They said I could.

Q. Did Aston—when you went in the cabin, did you not ask him where he had been during the time that he had left the "Arago?"

A. No, sir.

Q. Did he state he had been with those fellows?

A. No, sir.

Q. When Aston left you there at the cabin, and when, as he represented, he pretended he was going to Marzovio, you state that it was

agreed between you that you and he were to meet at Scott's camp. How did you know where Scott's camp was?

A. From the fellows in the cabin and from what I heard Aston say.

Q. Did Aston ever tell you where it was?

A. Yes, sir; he also stated where the fishing station was, also where Marzovio was, and also where Otter Cove was.

584 Q. And you state that you and Aston fixed up a story there that you would tell these people at Scott's camp, and the story that you told them at that camp was not true?

A. No, sir.

Q. The story that you told them there about having left the "Arago" in company with another person, and the captain having given you a rifle for the purpose of hunting for bear was a lie, was it?

A. Yes, sir.

Q. The story that you told to Mr. Scott and the other members of his party, to the effect that you went into the mountains in search of bear, and that when you returned the boat was gone, was a lie also, was it?

A. Yes, sir.

Q. The story that you went to a cabin, where it was written over the cabin, the following, "Fishermen's home," and also a notice to the effect that all lost fishermen were privileged to enter that cabin and help themselves to the food, was a lie?

A. Yes, sir.

Q. It was a lie about finding a dead man in the cabin?

A. Yes, sir.

Q. And about burying him?

A. Yes, sir.

Q. And it was a lie about being provisions in that cabin, was it?

A. Yes, sir.

Q. It was all a lie?

A. Yes, sir.

Q. And you told them?

585 A. Yes, sir; at the request of Aston.

Q. Why did you tell them that you had received that rifle from the captain of the "Arago?"

A. Because it was all what Aston told me.

Q. Did you not know that you had committed no crime?

A. Yes, sir.

Q. Was there any reason why you should lie to these people?

A. Yes, sir.

Q. You told them that you had been a lieutenant in the Army, did you?

A. Yes, sir.

Q. You told them that you had twelve hundred dollars on your person, did you?

A. No, sir.

Q. Did you not take out a roll of green backs at Scott's camp and state to them that you had twelve hundred dollars.

A. I said I had seven hundred and forty dollars.

Q. You told them that you had money?

A. I did.

Q. You told them, also, that you knew of a stream or creek that had gold on it?

A. Yes, sir.
Q. How did you know that?
A. Because I found some gold in False Pass.
Q. How did you find it?
A. Because I went there for water.
Q. How did you find it?
A. Picked it up.
586 Q. Where was this stream?
A. In the pass.
Q. Was not that northward of where you had been?
A. Yes, sir.
Q. As a matter of fact, you had not been to this creek at all?
A. No, sir.
Q. Was this story, about finding the gold, a lie?
A. No, sir.
Q. In your wanderings from Charley Rosenberg's cabin, where you met these three people while you were coming from Scott's camp, you went to the stream to get some water and found the gold?
A. Yes, sir.
Q. Where was it; on top?
A. No, sir; it was at the bottom of the stream; the water was running over it.
Q. How many days was it, after you arrived at Scott's camp, that Aston arrived there?
A. He arrived there the next day.
Q. The next day? What part of the day?
A. In the evening. I do not know just the exact time.
Q. You were in there at the time?
A. No, sir.
Q. What time did you get back to the tent that night?
A. About eight or nine o'clock.
Q. You saw Aston?
A. I did.
Q. Aston was then in the company of the rest of the people?
A. He was in the company of one man.
587 Q. Who was that man?
A. I cannot call his name at the present.
Q. What was the first thing you said to Aston?
A. I did not say anything; he said it to me.
Q. What did he say?
A. He said, "Hello, where did you come from?" I said, "From B ."
Q. Did you not tell the Scott party, when you arrived there, you tell them you had been a fisherman on the "Arago," and that they told you there had been a man at their camp from the seventh day of June, named Aston?
A. No, sir; I asked them if there had been any fishermen there. They said, "Yes, there is a man here by the name of Aston."
Q. Did they tell you how long he had been there?
A. No, sir; they told me that he had been there; they told me he was there.

Q. And he arrived there two days later than what you did?
A. No; I believe it was the next day.
Q. Who did he return with?
A. I do not know.
Q. Did he have anything with him that day, outside of his dory, at Scott's camp?
A. No, sir; he had hid everything.
Q. Where did he hide it?
A. In an old cabin across from Marzovio.
Q. What did he hide there?
A. He hid a blanket and provisions, that shot gun, a .44 revolver.
Q. When did he hide it?
588 A. When he was going to Marzovio.
Q. On the way from Cape Lapin to Marzovio?
A. Yes, sir.
Q. Did he ask you when you had left the "Arago?"
A. I do not know that he asked me when I left the "Arago."
Q. You called him out, did you not, to have a conversation?
A. He called me out.
Q. Had you not been making any promise to the cook, Smedley, to take him down to this cabin where the dead man was?
A. No, sir.
Q. Did you make any suggestions to Smedley, or not, or any of his party, that they should go down to get these provisions?
A. Not until the next day.
Q. You did make that suggestion to them?
A. No, sir.
Q. Not even to the cook?
A. No, sir; not to the cook.
Q. You did tell them about some provisions being cached somewhere.
A. Yes, sir; the next evening I told them about the provisions.
Q. Where they were?
A. No, sir. The lie was made up to escape from Scott's camp, and for the reason that he had made a contract with Mr. Scott.
Q. Why did he want to go back to Scott's camp if he had made a contract?
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Objection overruled.
Mr. SULLIVAN. Exception.
589 A. He never had gone away from there.
Q. He had been there all the time?
A. No, sir. He signed the contract when he got there. He never had been there before until he reached there that day, and signed a contract with Mr. Scott; therefore he got me to make up the lie so that he could leave there.
Q. When did he get you to make up that lie?
A. That evening.
Q. Did you not testify a few minutes ago that you and Aston fixed up this lie at the cabin?
A. Part of it.
Q. What part?

A. Well; where we would hide the things, and about what to tell old man Scott when we got there.

Q. Just state what part of the lie you made up at the cabin?

A. Before we got to Scott's camp, before we left the cabin, we made up what we must tell along the road, so I agreed to do it.

Q. To what did you agree?

A. I agreed that I would tell them that I had landed at the watering place and left the ship; got blowed away; got my dory but it got mashed up, and that we would go to Scott's camp and never let on that we had seen each other before; and furthermore, we made up that we would tell him that there was a cabin that belonged to the Arago company, that contained some goods, such as flour and stuff; and furthermore, I told him that there had been a man died there and we buried him.

590 Furthermore I told him that there had been a fellow come off the ship with me and that he had left me. That is all I told him that day of that.

Q. Is that the part you agreed upon when you were at the cabin?

A. Yes, sir.

Q. What part did you agree upon when you were at Scott's camp?

A. When we repeated the story over in the tent at Scott's camp with Mr. Scott, Mr. Aston saw me that evening and had a talk about the story, and also next morning. He told me that he understood that Mr. Scott was going to make an investigation of the matter and not to back out of it, so I did.

Q. What part of the story did you make up?

A. That is part of the story.

Q. That is simply what Aston told you to do?

A. Well, he told me to do it all; yes.

Q. You say that that was done to release Aston from the contract that he had entered into with Mr. Scott?

A. Yes, sir.

Q. What date did Aston land there?

A. I do not know just what date. They said he landed on the 7th, but he did not land on the seventh.

Q. How do you know?

A. All I know is what I heard him say. He could not have landed there on the seventh.

Q. Why not?

A. From what I heard him say he could not.

Q. This contract you say that Mr. Aston had with Mr. Scott was entered into before you arrived or after that time?

591 A. I do not know. Aston told me he had signed a contract to stay there; that if he did not he would have to go on the survey boat MacArthur.

Q. Did you say anything to Aston that night about this story that you had told to Mr. Scott in reference to this dead man?

A. No, sir; Aston knew all about it.

Q. Did you tell him that night that you had left the Arago three or four days after he did?

A. I did; I told him in the presence of Mr. Scott.

Q. Did you stay there that night?

A. I did.

Q. Now, when you left Charley Rosenberg's cabin, where these three men were, where did you intend to go?

A. I intended to go with Aston to Belkofsky or Sand Point. The first place where we were going to land was at Marzovio; after that go on to Mr. Scott's camp or the fishing station, and then go up to Belkofsky.

Q. From the fishing station where did you intend to go?

Q. When you left the cabin was your destination Scott's camp or the fishing station or Marzovio?

A. We intended to go to the fishing station or Scott's camp.

Q. From the fishing station where did you intend to go?

A. To Belkofsky or Sand Point.

Q. And Aston agreed to do likewise?

A. Yes, sir.

Q. When did you and Aston first fix the time for leaving Scott's camp?

A. We fixed it that night.

592 Q. You agreed that you would leave the following day?

A. Yes, sir.

Q. Where did you agree that you would go to?

A. Dutch Harbor.

Q. And you left Scott's camp about 9 o'clock the following morning with the intention of going to Dutch Harbor?

A. Yes, sir.

Q. Did you have any provisions when you left Scott's camp?

A. No, sir.

Q. None at all?

A. Only about a day's rations that I bought from Mr. Scott.

Q. Where did you go that day?

A. To Marzovio.

Q. How long did you remain there?

A. About half an hour or an hour.

Q. What time did you arrive there?

A. I do not know.

Q. Did you buy any provisions there?

A. I did; yes, sir.

Q. How much?

A. About four days' rations there.

Q. How much did it cost you?

A. Two dollars.

Q. Is it not a fact that it cost you one dollar and ninety cents?

A. No, sir.

Q. Who did you buy them from?

A. Charley Rosenberg's wife.

593 Q. From Charley Rosenberg's wife?

A. Yes, sir.

Q. You still intended to go to Dutch Harbor?

A. Yes, sir.

Q. How far did you go?

A. Went across False Pass from Marzovio.

Q. Then what did you do?

A. We went across False Pass. We could not go up the pass. We left our dory and walked up to Charley Rosenberg's cabin.

Q. Did you try to get out of False Pass for Dutch Harbor?

A. Yes, sir.

Q. So you intended to start in that dory, after you left Scott's camp and Marzovio, with about two dollars' worth of food. Did you think that was enough provisions to make a trip to Dutch Harbor?

A. No, sir; Aston said he knew where there were more provisions.

Q. You left for Dutch Harbor?

A. Yes, sir.

Q. Did he tell you where they were?

A. No, sir.

Q. Did you not ask him?

A. No, sir.

Q. You were willing that he should lead you in this?

A. Yes, sir.

Q. Placed yourself entirely in his hands?

A. Yes, sir.

Q. What was it that changed your course in not going to Dutch Harbor?

594 A. For the reason that Charley Rosenberg told us that we never could get to Dutch Harbor in a dory.

Q. That was a long time afterward?

A. No, sir.

Q. Was not that ten days after you left Scott's camp that you met Charley Rosenberg in his cabin?

A. No, sir.

Q. How many days was it?

A. We got to his cabin that day and saw Charley Rosenberg the next day.

Q. Is it not a fact that you left Scott's camp on the 20th day of June?

A. I do not know just the date. It was somewhere along the 22nd.

Q. When did you see Charley Rosenberg?

A. We met him on the 30th.

Q. That is eight days, is it not?

A. It is eight days; yes, sir.

Mr. SULLIVAN. We object to that.

The COURT. Objection sustained.

Q. When did you leave Scott's camp?

A. I can not tell the date.

Q. When did you arrive there?

A. I can not tell the date.

Q. When did you leave this cabin?

A. The 15th day of June.

Q. How many days did it take you to go from that cabin to Scott's camp?

595 A. I do not know.

Q. Have you not some idea?

A. I could give an estimate. It took me four or five days—maybe not so long, maybe longer.

Q. How many days did you stay at Scott's camp?

A. Two days.

Q. Would you say that from the time that you left the cabin to the time that you left Scott's camp more than six days elapsed?

A. I would not say.

Q. Were you more than five days on the trip?

A. I do not know.

Q. When you left you had no provisions, had you?

A. I had some that I took off the table.

Q. How long did that last you?

A. I do not know. I found some provisions in Charley Rosenberg's cabin.

Q. Did you not say that you arrived about the 17th or 18th of June?

A. Yes, sir.

Q. What is your best opinion?

A. It may have been the 18th, the 19th, or 20th.

Q. Could it have been later than the 20th?

A. I do not know.

Q. Could it have been later than the 22nd?

A. I do not know.

Q. You are positive that you met Charley Rosenberg on the 30th?

A. Yes, sir.

596 Q. How do you figure that up?

A. From what I heard Mr. Scott say at his camp.

Q. What did he say?

A. He said the day that he went up to prospect—that it was the 23rd day of June.

Q. When did you leave, after that prospecting trip?

A. We left the next day.

Q. So you left on the 24th?

A. Yes, sir; to the best of my knowledge.

Q. You say that you fixed the time that you met Charley Rosenberg from the time that you left the schooner "Arago." How did you calculate that?

A. The best I could. The same reason is that the cook that cooks at Mr. Scott's told me about the date.

Q. Did he tell you the date you arrived there?

A. He did, but I forget.

Q. Did he tell you about the date that you left?

A. No, sir.

Q. Did he tell you how many days it took you to reach Scott's camp from the cabin?

A. No, sir.

Q. How did you figure out that this was the 30th?

A. Because, when I got to the cabin I heard Charley Rosenberg say so.

Q. How many days after you left Scott's camp was it that you saw Charley Rosenberg? How many days was it?

A. I do not know. There were three or four cabins and we stopped a day in one place and a day in another.

597 Q. What was the condition of this rifle when you were at Scott's camp?

A. It was in good condition.

Q. You oiled it?
A. Yes, sir.
Q. How was the stock of the gun at that time?
A. It was in the same condition as it is now.
Q. Is it not a fact that you scraped the varnish off that stock?
A. No, sir.
Q. Did Aston scrape it off?
A. No, sir.
Q. You left Marzovio and went to what place?
A. I left Marzovio when I was coming down. I went across the pass to a little cabin that Charley Rosenberg claimed belonged to him.
Q. Did you stay there that night?
A. No, sir.
Q. Just point out on this map—this being Otter Cove, Scott's camp being located here. Just state the course that you and Aston followed.
A. We kept right up the pass; here is the pass, and here is the cabin.
Q. Where you state you met these people? Is Marzovio on here?
A. Marzovio is right there. We went in this direction and went toward the cabin. We landed right here; we went in this direction.
Q. Is it not a fact that you went around this way?
598 A. No, sir; we went right straight across.
Q. How did you go right straight across?
A. The reason is that we went by water. We kept around the water and went right in here.
Q. How many cabins did you stay in on your way from Scott's camp?
A. We stayed in three.
Q. Do you know when you arrived here?
A. I do.
Q. What night was that?
A. The same night that we were at Marzovio.
Q. This is the cabin that you claim to have met Charley Rosenberg at. What night did you get there?
A. Is this the cabin I said I met Charley Rosenberg at?
Q. Yes, sir.
A. I am not talking about that. I am talking about the cabin I stayed at the first night; opposite Marzovio; about four miles.
Q. Was that where you met Charley Rosenberg?
A. No, sir.
Q. Where did you meet him?
A. It is about ten miles from Cape Lapin.
Q. You met him on what date?
A. The 30th of June.
Q. And that cabin is about ten miles from Cape Lapin? Is that right?
A. I do not know whether it is the last cabin or not.
Q. Did you go beyond that cabin? beyond the cabin of Charley Rosenberg?
599 A. I do not know. I went out in the bottom in front of the cabin across the river.
Q. Did you go looking for any provisions; did you go as far as Cape Lapin, looking for provisions?
A. No, sir; I did not.

Q. You state that when you left Marzovio, you came over on the mainland about four miles?

A. No, sir.

Q. Over on Unimak?

A. Yes, sir; about four miles from Marzovio.

Q. Did you come over that night?

A. No, sir; we camped there.

Q. Where did you leave the dory?

A. We will say that this is Marzovio; this is False Pass; we went across False Pass to this cabin that is torn down; we left that dory on the beach here and walked up here to this first cabin; walked up there that night and stayed there all night. The distance between this cabin and this cabin must be about fifteen miles, to the best of my knowledge, and then we stayed all night and then returned back for the dory; we got back to the dory about one o'clock in the evening; we stayed there with the dory until about three and started up the pass with the dory; we then reached this cabin that we stayed all night at.

Q. What did you do with the dory?

A. Left it on the beach.

Q. Then what did you do next day?

600 A. Pulled it across the sand spit to the Behring Sea; we left it there that day and that night; we left there for another cabin close to the Behring Sea, and stayed there all that night; the next morning we got up and left about nine o'clock.

Q. Then you went to this cabin where you met Charley Rosenberg?

A. Yes, sir.

Q. Were you on the mainland?

A. I was when I stopped at Marzovio.

Q. While opposite to Marzovio?

A. No, sir.

Court to jury: Gentlemen of the jury, you will remember the admonition which the court has so frequently given to you not to discuss this case with anyone; you will not receive any communications from any person in regard to the case or anything else; you will refrain from discussing the case among yourselves or with anyone else; you will go in charge of the bailiff and will return to court at seven o'clock.

And thereupon the court was ordered to stand adjourned until the hour of seven p. m. this day.

601 UNALASKA, ALASKA, SEVEN O'CLOCK P. M.,
Friday, September the 6th, 1901.

All present; proceedings resumed pursuant to adjournment.

FRED HARDY resumed cross-examination:

Q. If this was the cabin that you stayed in on the night of June 10th to the night of June 15th, and here is Otter Cove, the place where Scott's camp was located, I wish that you would indicate to the jury the course that you took in going from this cabin to the camp.

Mr. SULLIVAN. We object to that question on the ground that he has never testified that he was there on June 15th.

(Argument by counsel.)

Mr. SULLIVAN. I withdraw my objection.

Q. What was the course that you pursued in going from this cabin to Scott's camp, at Otter Cove?

Q. (By HARDY.) This states the island, does it not, and this the sea? You say this is the cabin here, known as Rosenberg's hunting cabin?

A. (By McGINN.) This is Cape Lapin and that is the cabin; Charley Rosenberg's cabin, about ten miles from Cape Lapin.

A. If this be Charley Rosenberg's cabin, here is where I stopped and found those parties. Well, I crossed that creek right below the cabin in a dory, and came right around the island in the trail; I crossed another creek right here; this is the second creek you cross after leaving the cabin; I crossed that also and followed a trail and crossed this third creek right down near the beach where it is shallow, where a person can ford. I came right along the line; some places I had to get
602 down on the beach on account of the rocks. I kept along the beach until I reached this fourth stream. I think that right on this side of the creek is the second cabin belonging to Charley Rosenberg, about twenty miles from the first one. I continued my—I continued going right along the beach part of the way and part of the way on the trail; I came on up here until I came up——

Q. (By HARDY.) Is this False Pass here?

A. (By McGINN.) Yes.

A. Right in here somewhere is the cabin where I stopped and also when we returned, where we stopped.

Q. On the second or first night that you stopped?

Mr. SULLIVAN. We object.

The COURT. Objection sustained.

Q. Did you stay in that cabin?

A. I did.

Q. One night?

A. I stayed a couple of nights, off and on.

Q. When you were going from this cabin to Scott's camp?

A. One night.

Q. Was that the first cabin you stopped in?

A. No, sir.

Q. Is this the second cabin that you stopped in?

A. Yes, sir. Being that this is False Pass, there is a kind of sand spit in here, kind of a bight that runs around. You have to go around this bay and around this point. Now, there is a lake that you
603 surround. You go around about ten miles before you come to False Pass. Then you come around about fifteen miles until you reach this other cabin that is wrecked. You come down here about ten or fifteen miles from this cabin; that is across from Marzovio; then we kept down from this cabin until I came to Mr. Scott's camp.

Q. Did you stop in this cabin across from Marzovio on your way down?

A. No, sir.

Q. You stopped the first night that you left the cabin here at a cabin about twenty miles down from this?

A. I did.

Q. This is the second night that you stopped at a cabin down here that was located near a sand spit or sand point?

A. No, sir; I said that I stopped at a cabin about twenty miles from Charley Rosenberg's first cabin. Then I stopped at another cabin and then at a third. Then I came to Scott's camp.

Q. Where is this stream that you found the gold?

A. I do not know.

Q. About what location was it?

A. Well, it would be mighty hard for me to point out the stream. I could not point it out.

Q. You left Marzovio—you left Scott's camp, I believe you stated, about eight or nine o'clock in the morning?

A. I believe so; somewhere along there.

Q. You went to Marzovio, from Scott's camp to Marzovio? You stayed there about an hour and a half?

A. I said along about an hour.

604 Q. What time was it on the day that you left there?

A. It was in the afternoon sometime.

Q. Can not you state generally?

A. Somewhere about two o'clock.

Q. Then you crossed over to Unimak and struck this cabin?

A. We struck above it about two miles.

Q. Did you go down to the cabin?

A. I do not know whether we did or not.

Q. You beached that dory there?

A. Yes, sir.

Q. Then you went up about ten miles to a cabin?

A. Ten or fifteen; yes, sir.

Q. In a westward direction?

A. Yes, sir.

Q. Did you stay there that night?

A. We did.

Q. Did you return to your dory next day?

A. We did.

Q. Did you launch your dory?

A. Yes, sir.

Q. And you proceeded down False Pass until you came up opposite to where this cabin was?

A. Yes, sir; we proceeded up False Pass.

Q. And did you stay in that cabin that night?

A. We did.

Q. What did you do next day?

A. We pulled the dory across the sand pit and about six o'clock we moved over into the other cabin on the Behring Sea side.

Q. About how far distant from the cabin that you stayed in the

605 night before?

A. About one mile.

Q. You stayed there that night?

A. We did.

Q. How many nights did you stay there?

A. One night, I believe. I can not tell just how long.

Q. Then you went up the coast?

A. Yes, sir; to the Behring Sea.

Q. About how far did you go?
A. We went up the coast about forty miles, I suppose.
Q. Where did you camp that night?
A. In the second cabin of Charley Rosenberg's, I believe. I believe we camped in the next to the last cabin of Charley Rosenberg's; I am not quite sure.
Q. Is that the cabin where you hid the guns?
A. No, sir.
Q. The cabin this side of that?
A. Yes, sir.
Q. You stayed there that night?
A. To the best of my recollection, we did.
Q. Do you know whether you stayed more than one night?
A. I can not say.
Q. What is your impression?
A. I think we stayed there just one night.
Q. Then did you take your dory again and proceed down the coast?
A. We did.
Q. About how far?
A. To Charley Rosenberg's cabin, about two miles.
606 Q. Did you beach the dory?
A. Yes, sir.
Q. Then you went to this cabin?
A. Yes, sir.
Q. Was there anyone there?
A. No, sir.
Q. Is this the cabin you had previously been in where you saw these three persons, and the same cabin where you hid the guns?
A. Yes, sir.
Q. Did you find anything in the cabin?
A. Just some little trinkets that were lying around there; I believe some empty jars and provisions.
Q. Did you see anything of the three men?
A. No, sir.
Q. Do you know where they had gone?
A. Only what I heard from Mr. Rosenberg.
Q. You did not know what had become of these three men until you arrived there?
A. No, sir.
Q. Were not you and Aston a little afraid to go back to that cabin after taking the property?
A. We inquired of people along the beach.
Q. Of whom?
A. Of the natives.
Q. What did you inquire?
A. We asked them if there had been any men going up the beach. They said there had.
Q. I thought you said that the first information that you got
607 of these men was from Charley Rosenberg?
Mr. SULLIVAN. We object to that question.
The COURT. Objection sustained.

Q. Did you testify a short time ago that the first intimation that you had as to the whereabouts of these three men was what Charley Rosenberg told you?

(Objection by Mr. Sullivan.)

(No ruling.)

Q. Did you know anything about the whereabouts of these three men before you arrived at the cabin of Charley Rosenberg, accompanied by Aston?

(Objection by Mr. Sullivan.)

(No ruling.)

Q. You met Charley Rosenberg in the cabin that night, did you?

A. I did, on the 30th.

Q. Did you make any inquiry of him about three men being there?

A. He told us without inquiring. He had heard that some persons went up the Behring Sea in a dory.

Q. You knew nothing of your own knowledge?

A. No, sir.

Q. Were you not afraid to return to the cabin where you had robbed these three men of their property?

A. We went there on the lookout for them.

Q. You went there how on the lookout?

A. We went there on the watch for them. We went up quietly to see if there was anyone in the cabin.

608 Q. Did you not so state in your testimony, that you were in advance and that you saw some boots hanging outside? Did you not state that you stayed there one night?

A. No, sir.

Q. Did you not testify in your direct examination that you came to the cabin and saw a pair of boots hanging there; that you were in advance, and you stated to Aston, "There is some one in the cabin;" that Aston said, "Here, you take the gun, and I will go and see who is there?"

A. No, sir.

Q. You watched for them at this cabin?

A. We simply went down there quietly. It was about 10 o'clock, maybe later. We slipped up to the window to see if there was anyone in the cabin.

Q. If there was anybody in there what did you intend to do?

A. We intended to leave there.

Q. Had you, up to this time, made any inquiry of Aston as to where he was going?

A. I knew where he was going?

Q. Where to?

A. To Dutch Harbor.

Q. Were you going anywhere else before going to Dutch Harbor?

A. No, sir; Aston said he knew where some provisions were.

Q. Did you have any provisions?

A. We did.

Q. Where did you get them?

A. We bought them from Charley Rosenberg's wife.

Q. You bought two dollars' worth. How many days did that last you?

A. Until we reached the cabin.

609 Q. Did you have any provisions when you arrived at the cabin?
A. We did.
Q. How much?
A. Enough for a couple of meals, I guess.
Q. Did you have anything else with you; any blankets?
A. We did; we both carried them.
Q. Where did you get your blankets?
A. I took half of Aston's.
Q. Did you not testify that Aston had only half a blanket?
A. I said he carried one whole blanket, and when we reached the fishing station we cut it in two.
Q. Were these the only blankets you had when you reached the cabin?
A. Yes, sir.
Q. What else did Aston carry?
A. At that time he carried, I believe, a shotgun and a revolver.
Q. Anything else?
A. He had several trinkets. He carried a watch, a compass, a knife, and some provisions, I believe.
Q. How much provisions?
A. I guess there was enough for a couple of meals.
Q. What did you buy from Rosenberg's wife?
A. Some flour, some meat, and some beans.
Q. How much flour?
A. About ten pounds.
Q. How much does flour sell for at Marzovio?
A. I do not know. I know how much we got.
Q. How much.
610 A. About ten or fifteen pounds weight.
Q. What else?
A. A piece of meat.
Q. What kind?
A. Supposed to be seal.
Q. How much?
A. About seven or eight pounds.
Q. How much did you pay for that?
A. I do not know; I paid two dollars for the whole outfit.
Q. What else?
A. We got some beans and fish.
Q. You are sure that is all you got there?
A. Yes, sir.
Q. Did you have any other provisions with you?
A. No, sir; not at that time. We may have had a little bread that we got at Mr. Scott's.
Q. Did you have any baking powder?
A. No, sir.
Q. Did you hear Mr. Rosenberg's testimony when he was on the stand?
A. I did.
Q. Do you remember him stating that Aston took out a can of baking powder when he started to cook a meal?
A. Yes, sir.
Q. Where did he get this grub?

A. He got some grub at the cabin after we returned to Mr. Rosenberg's hunting cabin.

Q. Whereabouts?

A. About one hundred and fifty yards from the cabin, under some wood.

611 Q. Were you with him?

A. No, sir.

Q. What did he bring to the cabin?

A. He brought some flour and meat; some baking powder, a can of milk, and some sugar.

Q. Was it wrapped up?

A. Yes, sir; in cans.

Q. Were the cans wrapped up?

A. No, sir.

Q. How did Aston carry these provisions that he had?

A. In his arms.

Q. You did not carry them the night that you went to this cabin and found Charley Rosenberg there?

A. He already had them; he carried them in a blanket.

Q. Did he carry them in a piece of tarpaulin or canvas?

A. He had that around the blanket; the goods were inside the blanket.

Q. You say that Aston had a shotgun?

A. He did.

Q. And he had this revolver?

A. Yes, sir.

Q. You had the rifle and also a revolver?

A. Yes, sir.

Q. Why did he call you "Joe Cox?"

A. For the simple reason, he called me Joe Cox because we had changed our name.

Q. You had changed your name?

612 Mr. SULLIVAN. We object.

The COURT. Objection sustained.

Q. Why?

A. For the simple reason that we had left the Mr. Scott's camp and after what Aston said had been done on the island.

Q. Was it because you had left Mr. Scott's camp or because of what happened on the island?

A. It was because we had left Scott's camp and because we did not want them to know we were the same fellows who had been at Scott's camp.

Q. Why?

A. Because Aston wanted us to.

Q. Did he go under the name of George Aston?

A. Yes, sir.

Q. At Scott's camp?

A. Yes, sir.

Q. Charley Rosenberg called him "George," did he not?

A. Yes, sir.

Q. Was he at any time on the island known by any other name than the name he had been known by?

A. No, sir. He suggested to me to change my name and I did so.
Q. When?
A. That evening.
Q. Why did you remain outside that cabin?
A. Because I stopped out there a moment.
Q. What for?
A. Well, nothing particular; one thing, I was hiding the guns.
Q. Why?
613 A. Because of Aston's request.
Q. When did Aston make that request?
A. He made the request when I walked up to the cabin and saw the boots. He handed me his shotgun and says, "Here, hide these guns and I will go up to the cabin." I said, "Are you going take your blanket?" and he said, "Yes." He took his blanket roll and gave me the shotgun and I bid them.
Q. Did you throw anything else outside that cabin beside the shotgun and rifle?
A. I did not; no, sir.
Q. Did you have a vest that you threw down there?
A. No, sir.
Q. You said that one reason for changing your name was the fact that you did not want people to know that you and Aston were the same parties who had been at Scott's camp; is that correct?
A. Yes, sir.
Q. Is it not a fact that in that cabin that night, in a conversation that took place between yourself, George Aston, and Charley Rosenberg, you told them about being at Scott's camp and about Scott collecting from you fifty dollars?
A. I did. Mr. Rosenberg finally asked me, "What is your name?" I said, "Some call me Joe and some call me Fred; I have no particular name."
Q. If your object for changing your name was not to let people know that you were at Scott's camp, why did you mention Scott's camp?
614 You had never seen Charley Rosenberg before, had you?
A. No, sir.
Q. He was a total stranger to you?
A. Yes, sir.
Q. You did not know whether you could trust him?
A. I did not have anything to trust him with.
Q. You did not want to trust your true name to him, did you?
A. I finally did it.
Q. What was said about firearms that night?
A. Rosenberg asked if we had any rifles or guns? Aston said, "No." Then I said, "I have a 41 six-shooter, a Colt." Aston at the same time had a 44 on him, but he denied it.
Q. You stated in your examination that when Aston left the cabin where you met these three persons that he carried with him a shotgun and that he left that at some cabin.
A. Yes, sir.
Q. What cabin was that?
A. At the old cabin across from Marzovio.

Q. Was that on the island or on the mainland?
A. It was on the island.
Q. When did he get the shotgun?
A. He got the shotgun when we turned back; when we returned back to go to Dutch Harbor.
Q. When Aston came to the cabin with these additional provisions that you say that he carried in his blanket roll, consisting of some bacon, a can of baking powder, and some milk, did you then make any inquiry of him as to where he got the stuff?
A. I did not; I did not ask him; I saw where he got it.
615 Q. Where did you get your wood?
A. I got it down on the beach; there was also some in front of the cabin.
Q. Did you ask him whether or not there were any other provisions there?
A. No, sir.
Q. Were you not beginning to get a little bit solicitous about the food question?
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Objection sustained.
Q. You intended to go to Dutch Harbor up to that time?
A. Yes, sir; until we met Mr. Rosenberg, on the 30th of June.
Q. You had no other provisions than those you had bought at Marzovio and the provisions that Aston found near this cabin at Charley Rosenberg's?
A. Aston found enough provisions to last two men a month.
Q. Where were they?
A. In the cabin. He brought them into the cabin from the place where he got them from.
Q. I thought you said he carried a can of milk, a can of baking powder, a little bacon, and some flour. Were there any other things there?
A. No, sir.
Q. How much flour?
A. I believe nearly half a sack of flour.
Q. How much bacon?
A. About ten or fifteen pounds.
616 Q. About twenty-five pounds of flour?
Mr. SULLIVAN. Objection.
The COURT. Sustained.
Q. How many pounds of bacon?
A. About ten or fifteen.
Q. Was it ten or was it fifteen?
A. I did not weigh it.
Q. How many cans of baking powder?
A. One.
Q. What was the size of that can?
A. I suppose it was one pound.
Q. How many cans of milk?
A. One.
Q. What kind was it?
A. I do not know.

Q. Was it condensed milk?
A. I suppose it was.
Q. What else?
A. Some sugar.
Q. How many pounds?
A. There was a baking powder can full.
Q. What was the size of it?
A. I do not know. It would hold about a pound and a half.
Q. Was it a can or a box?
A. It was a can.
Q. Is that all the provisions that he brought?
A. That was all.

617 Q. Was there any of the provisions that you had bought at Marzova remaining at that time?

A. Yes, sir.
Q. What did that consist of?
A. A piece of meat, some flour, and some beans.
Q. Who carried these provisions into the cabin the night that Charley Rosenberg was there?
A. I think—I do not know—I think that part of the provisions was in the cabin—that we had left part of the provisions at the cabin.
Q. The night before?
A. Yes, sir.
Q. Do you know what part of the provisions you had left there?
A. I think we left the flour.
Q. That is the half sack of flour that you have reference to?
A. Yes, sir.
Q. And what else?
A. I think we left the sugar there—the baking powder and the milk. I do not think that we had any grub with us except what was cooked.
Q. You left them there in the cabin the night before you saw Charley Rosenberg?
A. Yes, sir.
Q. And when Aston entered the cabin the night that Charley Rosenberg was there did he have any of the provisions with him?
A. Yes, sir; we had some out hunting.
Q. How much did you have out hunting?
A. We had part of the meat, and we had some of it hanging in a little cooler in the cabin.

618 Q. That was the only provisions he carried into the cabin the night that Charley Rosenberg was there, in the cabin?

A. I think it was; yes, sir. We had some hid in an old trunk.
Q. Do you remember if, in the course of a conversation you had there that night with Aston, Charley Rosenberg and yourself, whether anything was said about seeing of any writing in a cabin above this, belonging to Charley Rosenberg?
A. I do not remember whether it was or not. I don't think there was in my presence.
Q. Do you know whether or not George Aston told Charley Rosenberg that he had seen any writing in his cabin to the effect that three

persons had been killed, that were supposed to have been killed by Indians, and that the writing also stated that they were prospectors?

A. No, sir; not in my presence.

Q. Did you ever read this writing in the cabin?

A. I did. When we were coming back to Marzovio.

Q. What, if anything, did you say at that time about it?

A. I do not mind any more. I said, I believe I looked up on the cabin. Aston pointed up to the cabin and said, "Here is some writing." I said, "What is it?" He said, "I can not make it out, the latter part; it is something about someone getting killed."

Q. Did he examine it?

A. He examined it. I saw a name, I believe it was Jackson, on the bottom of the board.

Q. You did not inquire into it any further?

619 A. No. Then I asked Aston, after we started, "I wonder what that writing means?" He said, "I don't know."

Q. You did not examine it close enough to state whether or not it gave the names of the persons who had been killed?

A. I do not think I did.

Q. Did you not think that that looked as if some wrong had been done?

(Objection by Mr. SULLIVAN.)

The COURT. Objection sustained.

Q. What impression did that give you?

(Objection by Mr. SULLIVAN.

Objection sustained.)

Q. Did you ever report to any person the fact that you had seen that writing there?

A. I did, after I returned to the fishing station.

Q. Who did you report it to there?

A. I think Mr. Aston said something about it one day to Mr. Gaffney. I spoke up and said I saw the name of some man by the name of Jackson. Aston went on to tell Mr. Gaffney about what was on the board.

Q. Did you not think or feel that it was your duty to report the story that Aston had told you about some men being murdered, and that these men in the cabin had murdered these three men and taken their property?

Mr. SULLIVAN. We object on the following grounds: First. That it is immaterial and irrelevant. Second. Upon the ground that the statement made by the attorney in regard to three men being mur-

620 dered; there has been no evidence introduced on the question, so far as any statement made by him about any parties being murdered.

The COURT. Objection sustained.

Q. When did Rosenberg leave the cabin?

A. On the first day of July.

Q. Who left with him?

A. George Aston.

Q. Where did Aston go?

A. He went to Behring Sea after his dory.

Q. What time did he return?

A. About ten o'clock in the morning.

Q. What had you been doing while he was away?
A. Packing up some goods.
Q. What goods?
A. Some guns, ammunition, and provisions that we had there.
Q. What did you intend to do with the guns?
A. Take them with us.
Q. How did you pack them up?
A. I wrapped them in a tarpaulin.
Q. Why did you wrap them up?
A. Because I did not want Charley Rosenberg to see the arms.
Q. Why not?
A. Because we had hid them that evening, and Aston said it would not do to allow Rosenberg to see the guns after telling him we had none. One reason was that Aston said they had been stolen, and if the men got tracing them up we would get caught with them.

Q. Why did you not leave your revolvers there also?
621 A. Because we could conceal them.
Q. That is the reason why you did not leave the watches?
A. Yes, sir.
Q. Did you ever go to a cache with George Aston three or four miles this side of Cape Lapin?
A. No, sir; I did not.
Q. Is it not a fact that at that cache, this side of Cape Lapin, that has been spoken of in the testimony that has been given by the witnesses of the prosecution—is it not a fact that you were there?
A. No, sir.
Q. Is it not a fact that near that cache there is a knoll, and you told Aston that was your fort, and you stood guard there?
A. No, sir; the only time I was there was when I left the ship. I did not know where the cache was.
Q. Did you see any property around there?
A. No, sir.
Q. That was on the 10th day of June?
A. Yes, sir.
Q. You left Charley Rosenberg's cabin on what night?
A. On the night of the 15th.
Q. The next time after meeting Charley Rosenberg there?
A. It must have been somewhere along about the fourth when we left.
Q. You stayed there until about the fourth of July?
A. I think so.
Q. Where did you intend going then?

A. Going back to Marzovio.
622 Q. While you were at that cabin did you try to get Charley Rosenberg to take you to Unga or Belkofsky?
A. We did; yes, sir.
Q. Did not you and Aston talk about this matter before that and agree to get off the island?
A. No, sir; not to my recollection. We were on our way to Dutch Harbor.
Q. What changed you?
A. Charley Rosenberg told us we never could reach Dutch Harbor in a dory.

Q. And that is the reason why you abandoned the idea?
A. Yes, sir.
Q. After leaving that cabin where did you go?
A. I went across to Marzovio.
Q. The first night after leaving there where did you stay?
A. We stayed in the second cabin, about twenty miles from there, where we saw this writing.
Q. Where did you go next night?
A. I think that we went on to the sand spit at False Pass, in the native cabin.
Q. When Aston left the cabin of Charley Rosenberg on the night of June 14th to go to Marzovio, you say that he had with him at that time a shotgun, a blanket, and some provisions—three or four days rations?
A. I do not quite understand.
Q. When he left the cabin of Charley Rosenberg on the night of June 14th?
A. Yes, sir; he had a shotgun.
623 Q. Do you know if he carried anything else with him?
A. I do. He had a 44 revolver, some provisions, a blanket, a compass, and a watch.
Q. The watch that is in evidence here?
A. Yes, sir.
Q. You stated in your testimony that when you left that cabin that you took two of these watches, or that there were two watches in a bag that you took. What had become of them?
A. I said that there was two watches in the cabin; I do not remember stating that I took them.
Q. Did you not state that there were two watches in the bag?
A. I stated that I took two watches and a pin out of the box.
Q. Did you not state in your statement that you made before Judge Whipple that in that bag that you took there was two gold watches, or about some provisions? Did you not state: "That morning at two o'clock, when I went to leave, I took with me a bag which I supposed belonged to these fellows, and the bag had in it the stuff. It had in it two gold watches and some razors and knives—don't know how many—and some other little trinkets." Did you not make that statement before Judge Whipple?
Mr. SULLIVAN. We object to that upon the only ground that less than two hours ago he went over exactly the same proposition with the witness.
The COURT. Objection overruled.
Mr. SULLIVAN. We save an exception.
The COURT. Exception allowed.
624 A. As I stated to you some time back, if I made that statement some one made a mistake; because I simply stated that I took out of the bag one watch and one pin; but there was at that time two watches in the box, but what became of the other watch I can not say.
Q. Did you not state in your testimony this afternoon, that what you stated to Judge Whipple was, that you took two watches out of the bag and that you did not state to him that these two watches were in the bag that you took from the cabin?
A. No, sir; I did not.

Q. You stayed at this cabin where you saw the writing, one night, with Aston did you not?
A. Yes, sir.
Q. And then you proceeded to what place?
A. To the place—I think it is the sand spit at False Pass.
Q. Did you stay there one night?
A. I believe we did.
Q. Then where did you go?
A. We went to Marzovio; we tried to signal Charley Rosenberg.
Q. Then where did you go?
A. To the fishing station.
Q. And arrived there on what day?
A. I can not say just what day it was.
Q. Have you no idea?
A. I do not know as I have. The day slipped me. I can not tell; I knew at the time but have forgotten.
Q. Was it in the month of July?
A. Yes, sir.
625 Q. Was it about the seventh or eighth of July, did you say?
A. I can not tell just the exact date when it was. It may have been the seventh or eighth or tenth; it may have been the fifteenth; I know it was some time in July.
Q. You went to work there, fishing?
A. I did.
Q. And occupied the same cabin that Aston did?
A. Yes, sir.
Q. You had the stuff that was in the canvas bag with you?
A. I did.
Q. Did you throw it away?
A. No, sir; I did not.
Q. You had the watch with you?
A. Yes, sir.
Q. Aston had his?
A. He did; yes, sir.
Q. How much money did you give to Mr. Gaffney to secure the boats?
A. Sixty-five dollars.
Q. What kind of money?
A. Paper currency.
Q. And you continued to work there until the time you were arrested?
A. Yes, sir.
Q. Who arrested you?
A. Mr. Sullivan.
Q. Why was it that you threw this watch and pin in the closet when you saw Mr. Sullivan?
A. For the simple reason that I did not want him to catch me
626 with them.
Q. Who did you suppose he was?
A. I supposed he was a marshal.
Q. Is it not a fact that you were playing cards in the cabin when some one said there was some one coming from the beach, over the hill?
A. No, sir; I was there before they arrived in sight.

Q. Just as soon as they arrived in sight you went out, did you?
A. No, sir.
Q. When you heard of them?
A. No, sir; I was in the closet at the time.
Q. How close were they when you first heard of them?
A. About a quarter of a mile.
Q. Where were you?
A. In the closet.
Q. Is it not a matter of fact that you were playing cards when the approach of these three persons was announced?
A. No, sir.
Q. Did you not make the remark at that time that the game was no good for you any longer?
A. No, sir.
Q. Is it not a fact that you got up immediately and went toward the closet?
A. No, sir; I got up about half an hour before I went out to the closet and said that I was tired playing and quit. There was two of us quit and left four fellows sitting there.
Q. Were you in that closet from the time that you left that cabin until the marshal found you there?
627 A. No, sir.
Q. How long were you there?
A. After I quit the game I went out to the fishing station. Well, then I went back and went to the closet.
Q. And as soon as you saw Sullivan, and he said he wanted you, you dropped the watch and pin?
A. Yes, sir; when he told me he wanted me.
Q. Why did you drop the watch?
A. Because I tell you, from what Aston told me.
Q. Did you not feel that you had not done any wrong?
Mr. SULLIVAN. We object to that as immaterial and irrelevant.
The COURT. Objection sustained.
Q. You had this revolver under your bunk, did you, or in your bunk; this 44 revolver?
A. I did at the time we was arrested.
Q. And you had this other stuff in there?
A. I did.
Q. You were brought aboard the "Manning," were you?
A. Yes, sir.
Q. And brought to Unalaska?
A. Yes, sir.
Q. And you had an examination before the commissioner?
A. Yes, sir.
Q. Is it not a fact that when you were first brought aboard the "Manning" from Dora Harbor that you recognized some of the men that you have seen here to-day as having seen in Alcatraz, and did you not have a conversation with them?
628 A. I do not mind speaking to any man on the "Manning" but one, and that man I recognized this evening.
Q. Did you not say to-day that you did not recognize them?
A. I said I recognized him, but did not know his name.

Q. Did you not say that you had seen him in the Philippines?

A. I said that I had seen him, and that he was an engineer on the Manila and Perduka Railroad.

W. C. Bowen requested to stand up.

Q. Did you speak to him when you came aboard the "Manning?"

A. Not to my knowledge; I spoke to several of the boys that spoke to me; I did not know them.

Q. Did you not recognize them first and nod to them first?

A. No, sir.

Q. You have read this statement which was signed by you, and which was made before Judge Whipple on the 30th day of August, 1901, and which has been introduced in evidence in this case?

Mr. SULLIVAN. We object to the question on the ground that the witness already testified to that.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

Q. Is that a correct statement?

A. Yes, sir.

Q. Did you ever make a statement subsequent to that date?

A. He came up and called me privately one day, and had the jailer bring me in before him.

Q. What was the jailer's name?

A. I do not know; I can recognize him.

629 Q. Is he at Unalaska?

A. Yes, sir; he is sitting right behind you.

Q. Felix?

A. Yes, sir.

Q. Did he send this man after you?

A. The man came and brought me in.

Q. Did you not send word to Judge Whipple, by Felix, that you wanted to see Judge Whipple?

A. I did once or twice.

Q. What did you want to see him about?

A. About several points.

Q. Did you not want to make a statement to him?

A. No, sir; not after I made my statement at the preliminary trial.

Q. Is it not a fact that you sent Felix to Judge Whipple to tell Judge Whipple that you wanted to make a statement to him?

A. No, sir; not before my preliminary trial.

Q. Did you after your preliminary trial?

A. I think I did, but I do not think that he ever returned.

Q. Why was it, in the statement that you first made before Judge Whipple at the preliminary trial, that you did not state to him that there were four persons there—not three?

A. For the simple reason, because I did not intend to make a complete statement at the preliminary trial because I did not have anyone to defend me but myself.

Q. Was that the reason? Well, what was the reason that you did not leave out one of the other persons and not George Aston?

A. Because I did not intend to bring Aston in until my trial

630 came off.

Q. You were going to save that for the trial?

A. I was going to save particular points until I received an attorney.

Q. That is the only reason that you have for not making that statement?

A. That is all.

Q. Did you make a statement about the 6th day of August to Judge Whipple, subsequent to the preliminary examination?

A. I did it by his own request; yes, sir.

Q. Did you at that time state substantially as follows: "That I left the ship 'Arago' about the 9th day of June, 1901, with a man by the name of Laurie, Mate Johnson, Mate Clark, and other sailors, some twelve or thirteen men in all, for the purpose of obtaining water?"

Mr. SULLIVAN. We object to that, as it has already been gone over.

The COURT. Objection overruled.

Mr. SULLIVAN. We save an exception.

A. I made the statement, but I said when I made my statement that he called me in there for a private conversation for the reason that he wanted to issue papers and get the parties, if there were any others. He said, "Hardy, if you will tell me these particular points it shall not be introduced against you as evidence at your trial." I said, "I will tell you these points and will tell you about these other three parties."

Q. Did you state to him that you left the ship "Arago" about the 9th of June, 1901, with a man by the name of Laurie, Mate
631 Johnson, Mate Clark, and the other sailors, some twelve or thirteen men in all, for the purpose of getting water?

A. I did, but I stated it was either on the 9th or 10th.

Q. Did you also at that time state to him that there was a tent standing on the black sand on the beach near the mouth of a creek at Cape Lapin?

A. I did.

Q. Did you also state something about you and Mate Clark hunting for a fox?

A. I did.

Q. Did you also at that time state before Judge Whipple that you made a pretext that you had lost a glove and went back to look for it and did not return, or words to that effect?

Mr. SULLIVAN. We object on the grounds that the counsel has already gone over the same question, and the continued repetition has a tendency to prejudice the minds of the jury.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

A. I made a statement to Mr. Whipple in this style of form, that I did make an excuse to First Mate Johnson while at the spring that I had lost one of my gloves, for the purpose of making my escape from the crowd.

Q. Did you not also at that time state that you travelled northward until you came to Charley Rosenberg's hunting cabin, and that you found at said cabin four men, including one George Aston?

A. Yes, sir.

Q. Did you not at that time and place, to the same person,
632 make the following statement: "That Aston told me that these three men had robbed some men further down the shore, and had then killed them all," or words to that effect?

A. I recollect; I believe I told him that Aston told me that some men had been killed on the island, and I asked him who they were. He said he did not know.

Q. Did you not, at the same time and place, to the same person, make the statement "that he, Aston, showed me a watch that bore the inscription 'Julia to Florence' or 'Florence to Julia.'"

A. He did; yes, sir—in the cabin.

Q. Did you not also at that same time state that these men and Aston had a talk in the cabin to the effect that if he, Hardy, was not all right, that they would plant him—

Mr. SULLIVAN. We object to that question upon the ground that it has already been gone over by the prosecuting attorney.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

to the effect that if you were not all right they would plant you?

A. I made some statement to that effect, the same as I made this afternoon.

Q. Did you not at the same time and place, to the same person, state "that I stopped at the said cabin with these parties that night, and on the following day I and Aston entered into an agreement whereby
633 we agreed to steal the property of these parties that night?"

A. I made a statement, but not in that manner.

Q. Was that the substance of it?

A. Yes, sir.

Q. Did you not also, at that time, state to him that pursuant to said agreement made and entered into between you and Aston, that "about two o'clock on the following morning Aston and I got up, and while the other men were asleep, stole the rifle, watches, and other things found in your possession when arrested?"

A. No, sir; I never made that statement; furthermore, I wish to say that I did not swear to that statement. I made it at Mr. Whipple's request, for the reason that he said that he wanted some particular points in regard to those other parties.

Q. Why was it that you and Aston left Scott's camp so soon after Aston got there—that is, on the morning following the night that Aston arrived there?

A. For the simple reason that Mr. Scott "did me" like he did.

Q. Or that you "did him?"

A. No; that he "did me."

Q. How many persons were on the schooner "Arago," all told?

A. The fishing gang consisted of twelve; I think the "dressing gang" consisted of five, which would be seventeen, and the captain was eighteen, to the best of my knowledge.

Mr. Schumer asked to stand up.

Q. Look at this man and state whether or not you have ever seen him before.

634 A. No, sir.

Q. Ever seen him in the Philippines?

A. No, sir.

Q. Ever see him at Iloilo?

A. No, sir.

Q. At Penay?
A. No, sir.
Q. At Negros?
A. No, sir; I never saw him in my life—to the best of my recollection.
Mr. McGINN. That is all.
Mr. SULLIVAN. That is all.
(Testimony of Mr. Hardy closed.)

635 Mr. SULLIVAN. If the court please, we desire to introduce the affidavit of George Henry Aston, filed on the motion for a continuance—for a continuance—in opposition to the motion for a continuance by the defendants—for the purpose of showing that he, Aston, stated in his affidavit that the schooner "Arago" left San Francisco for Behring Sea about the middle of April, 1901, as contradictory of his statement upon the stand that it left San Francisco for Behring Sea in the latter part of March or the fir't of April, 1901; also for the purpose, if the court please, of showing the affidavit that he filed in said cause, shows that he made a statement in said affidavit that when he met Hardy at Scott's camp, that he asked Hardy when he left the "Arago," and Hardy replied "Three or four days after he (Aston) left the same schooner," as contradictory of his testimony upon the stand as to the time when Hardy left the schooner "Arago."

Mr. McGINN. The prosecution has no objection to the affidavit going in.

The COURT. It may be admitted.

Copy of affidavit.

In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY. } Affidavit of George H. Aston.

I, George H. Aston, being first duly sworn, depose and say that
636 I am a citizen of the United States, and over the age of twenty-one years.

That about the middle of April, 1901, he left San Francisco, California, on the fishing schooner "Arago" for Behring waters.

That on said boat as a fisherman was the above-named defendant, Fred Hardy.

That on Sunday, the second day of June, 1901, I left the "Arago" in my boat for the purpose of fishing; but a storm coming up, I was unable to return to said boat, and was in my boat at sea during the night of June 2nd and until the afternoon of June 3rd.

That on the afternoon of June 3rd I reached the shore of Unimak Island near False Pass and was met by a native who assisted me in landing my boat and who brought me to his camping place, gave me food, and allowed me to remain with him on the nights of the 3rd and 4th of June of this year.

That on the 5th day of June the natives broke camp, and I went to Marchova and there met one Charley Rosenberg and remained with him on the nights of the 5th and 6th days of June, 1901.

That on the 7th day of June, 1901, I arrived at Scott's camp at Otter Cove and remained with the Scott's party continuously from the 7th day of June until the 20th day of June, 1901.

That on the 20th day of June I returned from Lazareff, where I had gone with Mr. Collinwood, one of Scott's party, for the purpose of getting provisions, and found on my return that the above-named defendant, Fred Hardy, was at the camp.

I had a conversation with Hardy that night, and I asked him when he left the "Arago," and he said, "Three or four days after you did." He then told me that he had come ashore with a watering party and that he and a fisherman by the name of Charley had gone back into the mountains for the purpose of hunting for bear.

637 That they returned to the boat, when he, Hardy, made a pretext that he had lost his glove and went to search for it. That when he returned the boat was gone.

He then told me that the story that he had told Mr. Scott about finding these goods in a cabin and about finding a dead man was untrue; that he had found the goods in a tent.

He showed me at this time a roll of paper money which he said amounted to twelve hundred dollars ($1,200.00), and made the remark, "You know that this is more money than I had when I was aboard the 'Arago.'"

He told me that he did not want a man by the name of Smedley, who was cook for the Scott party, to accompany him to where these goods were, for the reason that he had told Smedley and others that the goods were in a cabin, and as they were not in a cabin, but in a tent, that it might create some suspicion, and he urged me to go to Mr. Scott and ask him not to allow Smedley to accompany us to the place where the goods were.

Hardy told me that we would go to where the goods were and get a sufficient amount of clothing and provisions to enable us to get off the island, and go to some place in civilization and that we would then open up a saloon.

I agreed to go with Hardy upon this trip, but not without first asking Mr. Scott if it would be all right to take these provisions, and Mr. Scott told me that it would be all right, provided that if anybody at any time made any claim to them that we should reimburse them for what we had taken.

On the morning of the 20th of June, 1901, Hardy and I left Scott's camp for the place where he said the goods were located.

638 That on the date aforesaid, in our dory, about three or four miles from Scott's camp, said Hardy took from his pocket three gold watches, one of them bearing the inscription "From Florence to Julia," or "From Julia to Florence." I asked him where he had gotten these watches, and he told me not to be particular and not to ask too many questions. He also told me that the rifle he had with him was given to him by the captain of the "Arago" when he came ashore.

Hardy subsequently told me a different story, to the effect that when the party arrived upon the beach to get water that they saw a tent standing upon the beach, near a small creek; that while they were still quite a little distance from the shore they heard the reports of guns and saw three men rush out of the tent and go in different directions. That when they arrived at the tent they found everything in disordered condition. That a .44 Colt revolver that he had with him he found immediately in front of the tent.

That there was some whiskey there, and that he and the mate drank some of it. That they also found fresh bread, and that there was in the tent plenty of provisions, blankets, clothing, ammunition, and reloading tools. That he and the 3rd mate went to hunt for foxes, and that he left the mate on the pretext that he had lost his glove. That when he returned the boat was gone. That he stayed in this tent three or four days; after removed the goods three or four miles to the eastward and remained there 3 or 4 days, and then proceeded to Scott's camp.

(Signed) G. H. ASTON.

639 Subscribed and sworn to before me this 2nd day of September, 1901.

(Signed) JOHN T. REED,
Deputy Clerk, U. S. District Court,
District of Alaska, Second Division.

The foregoing affidavit is defendant's Exhibit 1.

Mr. SULLIVAN. This testimony practically closes the testimony for the defense, with the exception possibly of one or two questions that we may want to ask the defendant, Hardy, and possibly of one other witness, Mr. Rosenberg, but the testimony, all told, will not take over ten minutes. I will ask, if the court please, until to-morrow morning to close our case.

The COURT. Have you any objection to the prosecution going ahead with their witnesses?

Mr. SULLIVAN. No, sir.

And thereupon the prosecution offered the following testimony in rebuttal:

640 TESTIMONY IN REBUTTAL.

Mr. WILLIAM C. BOWEN, a witness produced on behalf of the Govment, in rebuttal, having been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) What is your name?

A. William C. Bowen.

Q. Where are you at present employed?

A. On the revenue cutter "Manning."

Mr. SULLIVAN. We object to the witness being examined, on the ground that his name was not endorsed on the indictment.

Secondly, if the court please, that there is a statistical reason, if the court has a discretion in regard to it. We come here; they say we ask for a continuance, which we do; they produce these witnesses; we have no opportunity whatever from the time this case began to obtain witnesses from Alcatraz to rebut any testimony that these witnesses may

give. To say that we will be entitled to a continuance at the present time would not do, because that would be acquittal of the prisoner as far as the jury is concerned.

We have had no opportunity to introduce our testimony to counteract it. If the court has a discretion in the matter, it certainly appears that this man should not be tried upon testimony brought here for rebuttal, in *regard to what they say involves imprisonment in the United States* penitentiary more than three thousand miles from this point, where he could not rebut it, except by his own statement. There are no witnesses here whereby he could rebut anything that happened in the
641 Alcatraz prison.

The COURT. There is no provision in our law which requires more than a list of the witnesses that appeared before the grand jury upon the indictment. But the United States statutes require that in a case of this kind a list of the witnesses shall be served upon the defendants, at least three days prior to the trial, for the purpose of giving the defendants an opportunity to consider what the testimony of these witnesses will be, and meet it.

We have no such provision as that in our law, and if we had, it is fairly met in this case by not only giving the names of these witnesses three days in advance, but giving his testimony in effect, at least; and I think that the testimony ought to be admitted at this time, under the circumstances.

The objection will be overruled.

Mr. SULLIVAN. Exception.

The COURT. Exception allowed.

Mr. SULLIVAN. I now ask the prosecuting attorney to state whether or not the names of these witnesses was given us as a witness who would be used at the trial, or given to the defendant or to his attorneys; and I offer to prove now, by the clerk of the court, that no list of witnesses whose names would be used at the trial was filed at this court, in this case, or served upon us.

Mr. MCGINN. I will admit that.

I would like the record to show, at the same time, that on
642 Tuesday, the second day of September, that on a motion for a continuance, the affidavit of the witness was filed, stating the same matter that we expect to prove by him at this time.

I would like the record further to show that the defendant has not at any time, either by himself or by his attorneys, made any application whatever upon the district attorney or any other person for a list of witnesses that he was to use upon the trial of this cause.

Mr. SULLIVAN. The defendant is willing to admit the statement made by the prosecution.

Q. You say that you are aboard the revenue cutter "Manning?"

A. I am; yes, sir.

Q. How long have you been there?

A. Since April 2nd, 1901.

Q. Where did you first go aboard the Manning?

A. At the Fulton Iron Works, Frisco.

Q. San Francisco, California.

A. Yes, sir.

Q. Where were you during the month of October, 1900?
A. At Alcatraz prison.
Q. When did you go to Alcatraz prison?
A. Some time in July.
Q. Of what year?
A. 1900.
Q. From where had you been sentenced?
A. From the Philippine Islands?
Q. On what charge?
A. Assault and battery.
Q. How long a sentence did you receive?
643 A. One year.
Q. And arrived at Alcatraz at what time?
A. Some time in July.
Q. Did you know the defendant, Fred Hardy?
A. I do.
Q. Where did you know him?
A. At Alcatraz prison.
Q. When did you first see him there?
A. October or November.
Q. Of what year?
A. 1900.
Q. How long did you remain there?
A. Until the 4th day of February, 1901.
Q. Was the defendant, Fred Hardy, at Alcatraz prison at the time that you were there?
A. He was.
Q. From the time that you first saw him, in October, and up to the time that you were discharged, did you see the defendant frequently during that time?
Mr. SULLIVAN. We object to that as leading.
The COURT. Objection sustained.
Q. How often did you see the defendant from the time that you first saw him there until the time that you were discharged?
A. Most every day.
Q. What cell did you occupy, if any?
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Objection overruled.
Mr. SULLIVAN. Exception.
644 A. Cell 28, Number 1 prison.
Q. What cell did the defendant occupy?
A. I could not say.
Q. By what name or appellation did the defendant go by?
A. "Diamond Dick."
Q. Do you know why that name was given him?
A. I believe it was from reading dime novels.
Q. Did you ever have any conversation with the defendant at Alcatraz?
A. No, sir.
Q. Did he ever tell you why he was there?
A. No, sir.
Q. Did you ever see him? Where did you next see him after leaving prison?

A. At the Presidio.
Q. Where?
A. Around Al. White's saloon.
Q. About what time did you see him there?
A. The latter part of February or beginning of March, 1901.
Q. Up to what time did you see him around Al. White's saloon?
A. About the 20th or 24th of March.
Q. What was he doing?
A. Did not seem to be doing anything that I saw.
Q. Was he in the Army at that time?
Mr. SULLIVAN. We object to that as immaterial and irrelevant. The court has already ruled that they having filed this evidence was one reason for admitting this testimony.
Q. Was he in army uniform?
645 Mr. SULLIVAN. We object to that question.
The COURT. Overruled.
Mr. SULLIVAN. Exception.
A. I believe he did go in the army uniform.
Q. Was it of an officer or a private?
A. A private.
Q. What color was it?
A. A blue one.
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Overruled.
Mr. SULLIVAN. Exception.
Q. Did you have a speaking acquaintance with the defendant?
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Overruled.
Mr. SULLIVAN. Exception.
A Yes, sir.
Q. State what your acquaintanceship amounted to?
Mr. SULLIVAN. We object to that.
The COURT. Objection sustained.
Q. Are you positive that the defendant here is the same person that you saw at Alcatraz?
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Objection overruled.
Mr. SULLIVAN. We save an exception.
A. Yes, sir.

646 Cross-examination:

Q. (By Mr. SULLIVAN.) How old a man are you?
A. Twenty-four years.
Q. When did you enter the marine service?
A. I am not in the marine service; I am in the Revenue-Cutter Service.
Q. When did you enter the Revenue-Cutter Service?
A. On April 2nd, 1901.
Q. What boat have you been employed on?
A. On the "Manning."
Q. Where is she stationed?
A. She is of the Behring Sea fleet.

Q. Where is she now?
A. In Dutch Harbor.
Q. How long has she been in the vicinity of Dutch Harbor?
A. About eight days.
Q. Is that the first time she has been here?
A. No, sir.
Q. How long has she been in the vicinity of Dutch Harbor?
A. She has been in these waters for about two and a half months.
Q. Are you acquainted with Lieutenant Landry?
A. I am.
Q. Is he an officer aboard that vessel?
A. He is.
Q. Is this the gentleman sitting here?
A. Yes, sir.
Q. Is he your superior officer?
A. He is.

647 Q. You say you were sentenced to one year?
A. I was.
Q. For assault and battery?
A. Yes, sir.
Q. You got a year for a simple assault and battery?
A. Yes, sir.
Q. Where were you when you were sentenced?
A. In the Philippine Islands.
Q. In the Philippine Islands?
A. Yes, sir.

Mr. SULLIVAN. That is all.

648 Redirect examination:

Q. (By Mr. McGINN.) How long had you served?
Mr. SULLIVAN. We object to that as too general?
The COURT. Objection sustained.
Q. How long had you served at Alcatraz?
A. Eight months.
Q. How was it that you were discharged at the expiration of eight months?
Mr. SULLIVAN. We object to that as immaterial and irrelevant.
The COURT. Objection sustained.
Q. Who did you assault?
Mr. SULLIVAN. We object to that as immaterial.
The COURT. Objection sustained.
Mr. McGINN. That is all.
Mr. SULLIVAN. That is all.
(Examination of Mr. Bowen closed.)

649 Mr. MARTIN TRICKER, a witness produced on behalf of the Government, in rebuttal, having been duly sworn, testified as follows:

Q. (By Mr. McGINN.) What is your name?
A. Martin Tricker.
Mr. SULLIVAN. We object to this witness testifying at all in the case,

upon the same grounds that the defense made to the witness William C. Bowen being permitted to testify.

I am willing that the record should disclose the same objection and the same condition of facts existing as in the case of Bowen.

The COURT. Same ruling by the court.

Q. What is your business?

A. I am on the "Manning" as a seaman.

Q. How long have you been employed as such?

A. Since the 7th of May, 1901.

Q. Where did you enter into the Revenue-Cutter Service?

A. In the Fulton Iron Works, San Francisco.

Q. Where were you during the years 1898 and 1899?

A. In the Philippines.

Q. In what regiment?

A. First I was in the First South Dakotas, and secondly in the Twenty-eighth Volunteer Regiment of Infantry.

Q. Were you ever tried by a military court in the Philippines?

A. Yes, sir.

Q. On what charge?

A. Absence without leave.

Q. For how long?

650 Mr. SULLIVAN. We object to that as immaterial and irrelevant.

The COURT. Objection sustained.

Q. Were you ever sentenced by a military court to Alcatraz?

A. Yes, sir.

Q. When?

A. In October, 1900.

Q. When did you arrive at Alcatraz?

A. On the 4th day of November, 1900.

Q. How long did you continue there?

A. I was there four months.

Q. Do you know the defendant, Fred Hardy?

A. I do.

Q. When did you first become acquainted with him?

A. In November, in prison.

Q. What year?

A. 1900.

Q. Where?

A. In Alcatraz prison.

Q. How long did Hardy continue as a prisoner there?

A. Until about the end of February or beginning of March.

Q. Did your sentence expire before or after his did?

A. After.

Q. Did you see him often?

A. Yes, sir; every day.

Q. What was the number of your cell?

A. 78 in Number 1 prison.

Q. Do you know the cell Hardy occupied?

651 A. No, sir.

Q. Did you have a speaking acquaintance with Hardy?
A. I did.
Q. Did you ever have any conversation with him?
A. I did.
Q. Did he ever make any statement to you why he was there?
Mr. SULLIVAN. We object to that as immaterial and irrelevant.
The COURT. Objection sustained.
Q. Did he tell you why he was there? In what capacity did he say he served in the military service of the United States?
Mr. SULLIVAN. Objection on the ground that it is immaterial and irrelevant.
(No ruling.)
Q. By what name did he go?
Mr. SULLIVAN. Objection as immaterial and irrelevant.
The COURT. Overruled.
Mr. SULLIVAN. Exception.
A. Fred Hardy.
Q. Did he go by any other name?
A. We called him "Diamond Dick."
Q. Do you know why they called him that?
A. On account of reading dime novels.
Mr. MCGINN. Take the witness.

652 Cross-examination:

Q. (By Mr. SULLIVAN.) Did he have a great reputation as a reader of dime novels?
A. Yes, sir.
Q. That is where he got the appellation of "Diamond Dick?"
A. Yes, sir.
Q. When did you first enlist in the service of the United States?
A. In Manila, Philippine Islands.
Q. When did you enlist in the Navy or the service that has boats running around in Behring Sea?
A. I enlisted in the Revenue-Cutter Service in May, 1901.
Q. You enlisted in San Francisco?
A. I did.
Q. When?
A. On the seventh of May, 1901.
Q. Most of the time since you have been around the waters of the Behring Sea?
A. Yes, sir.
Q. Are you acquainted with Mr. Landry?
A. Yes, sir; he is my superior officer.
Q. Has been ever since you have been on the "Manning?"
A. Yes, sir.
Mr. SULLIVAN. That is all.

653 Redirect examination:

Q. (By Mr. MCGINN.) Do you know whether Hardy was a private or an officer?
Mr. SULLIVAN. Objection.
The COURT. Overruled.
Mr. SULLIVAN. Exception.

By Mr. SULLIVAN. I desire to make a further objection. That in addition to the fact that this name does not appear on the indictment, that there is nothing contained in the affidavit stating whether he was a private or a lieutenant, and upon the further ground, or the additional ground that we have already made, that his name is not endorsed on the indictment to the affidavit that he filed in the opposition for a motion for continuance.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

A. He told me himself that he was a private.

Q. Did he tell you in what regiment?

Mr. SULLIVAN. Objection upon the same ground that we objected to the last preceding question and upon the further ground that no foundation was made in the examination of Mr. Hardy.

(No ruling.)

Q. Do you know whether or not any officers are ever sent to Alcatraz prison?

Mr. SULLIVAN. We object to that question.

The COURT. Objection sustained.

Mr. SULLIVAN. That is all.

(Examination of Mr. Tricker closed.)

654 Mr. FRANK W. LEE, a witness produced on behalf of the Government, in rebuttal, having been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) What is your name?

A. Frank W. Lee.

Q. What is your business?

A. Coal passer.

Q. Where?

A. On board the revenue cutter "Manning."

Q. How long have you been such?

A. Since the seventh of May, 1901.

Q. When did you first join the revenue service of the United States?

A. May 1st, 1901.

Q. Have you ever been in the Philippines?

A. Yes, sir.

Q. When did you go there?

A. In 1898.

Q. What regiment?

A. First North Dakota.

Q. Did you afterwards become a member of any other regiment?

A. I did.

Q. What was that?

A. Thirty-sixth Volunteer.

Q. Did you know Fred Hardy in the Philippines?

A. I did.

Q. Were you employed on any railroad in the Philippines?

655 Mr. SULLIVAN. We make the same objection to the testimony of this witness as we made to the testimony of the witnesses Bowen and Tricker.

The COURT. Same ruling of the Court.

A. I was.

Q. On what line?
A. Manilla and Purduka.
Q. Were you ever at Alcatraz?
A. I was.
Q. From where were you sent?
A. From Manilla.
Q. On what charge?
A. Assault and battery.
Q. When did you arrive at Alcatraz?
A. About the first of September.
Q. What year?
A. 1900.
Q. How long did you remain there?
A. Until about the first of April.
Q. Of what year?
A. 1901.
Q. Did you see the defendant, Fred Hardy, at Alcatraz?
A. I did.
Q. When did you first see him there?
A. Shortly after I arrived there.
Q. Can you place about the time?
A. No, sir.
Q. What was he doing there; in what capacity?
A. As a military prisoner.
656 Q. From the time that you first went there to the time that you left did you see him often?
A. I did.
Q. Were you discharged while he was still confined?
A. No, sir.
Q. Was he discharged prior to the time that you were?
A. Yes, sir.
Q. From the time that you first saw him there to the time he was discharged did you see him often?
A. I did.
Q. About how often?
A. Every day.
Q. What cell did you occupy?
A. Number 20.
Q. Do you know what cell Hardy occupied?
A. I think it was 208 or 209.
Q. How many cells were there between you?
A. I think there were two or three.
Q. Did you ever have any conversation with him in the prison?
A. A few times now and then.
Q. Did you have a speaking acquaintance?
A. Yes, sir.
Q. Do you know if he went by any other name than that of Fred Hardy?
A. Yes, sir.
Q. By what name?
A. "Diamond Dick."

Q. Do you know why that name was given him?
657 A. From reading dime novels.
Q. You are satisfied that the defendant is the same party that you knew at Alcatraz prison by the name of Fred Hardy?
A. Yes, sir; I am.
Mr. McGINN: You may cross-examine.

658 Cross-examination:

Q. (By Mr. SULLIVAN.) You say that he was given the appellation of "Diamond Dick" on account of reading dime novels?
A. Yes, sir.
Q. Were you ever on the island of Negros?
A. No, sir.
Q. Never saw Fred Hardy on that island, did you?
A. No, sir.
Q. When did you enlist in the revenue service of the United States?
A. The first day of May, 1901.
Q. Upon what boat?
A. The revenue cutter "Manning."
Q. Is Lieutenant Landry an officer of that boat?
A. Yes, sir.
Q. Is he your superior officer?
A. He is. One of them.
Q. For how long a time were you sentenced?
A. For one year.
Q. For what offense?
A. Assault and battery.
Mr. SULLIVAN. That is all.
Mr. McGINN. That is all.
(Testimony of Mr. Lee closed.)

659 Mr. CHARLES SCHOEMER, a witness produced on behalf of the Government, in rebuttal, being first duly sworn, testified as follows:
Q. (By Mr. McGINN.) Where are you employed?
A. On the United States ship "Manning."
Q. In what capacity?
A. Musician.
Q. When did you become a member of the "Manning?"
A. On April 2nd of this year.
Q. Where?
A. At the Fulton Iron Works, San Francisco.
Q. Were you ever in the Philippines?
A. Yes, sir.
Q. What regiment?
A. I was in the 18th Regulars.
Q. Where were you stationed?
A. At Iloilo. I was also stationed at Cavite.
Q. Until what time?
A. Christmas of 1898 we were ordered to Iloilo.
Q. Did the whole regiment go?
A. Yes, sir.

Q. How long did you remain there?
A. We laid in the bay about four or five days.
Q. On what island is Iloilo?
A. On Panay.
Q. Did you know Fred Hardy, the defendant?
A. I did.
Q. Where did you first become acquainted with him?
A. At the Tennessee headquarters.
660 Q. Where were their headquarters?
Mr. SULLIVAN. I desire to make the same objection that I made to the preceding witness, and also object to the question on the ground that the affidavit which he filed makes any reference to the incarceration of Mr. Hardy, the defendant, at Alcatraz.
The COURT. Objection overruled.
Mr. SULLIVAN. Exception.
The COURT. Exception allowed.
Q. Where did you first become acquainted with Hardy?
A. At Iloilo; their headquarters are about one hundred and twenty yards from the molere.
Q. How close were the Tennessee headquarters to the Eighteenth?
A. In the same headquarters.
Q. How much of the Tennessee regiment was there?
A. I think there were three divisions there.
Q. You saw the defendant there?
A. Yes, sir.
Q. What was he doing?
A. As a soldier.
Q. In what regiment?
A. In the First Tennessee Volunteers.
Q. Was he an officer?
A. Not at the time that I seen him there. He was an ordinary, everyday private.
Q. What time did you see him there?
A. It was along about May, 1899.
Q. You saw him up to what time?
661 A. About the last time I seen him was about somewhere along in June, 1899.
Q. When was the first time you saw him?
A. It is about two or three months after I seen him that I became acquainted with him.
Q. Are you sure the defendant at the bar is the same man?
A. I am as sure as my name is Schumer.
Mr. MCGINN. That is all. Take the witness.

662 Cross-examination:

Q. (By Mr. SULLIVAN.) When did you enter the revenue service?
A. April 2nd, 1901.
Q. Upon what boat?
A. On the ship "Manning."
Q. Are you acquainted with Lieutenant Landry?
A. Yes, sir.

Q. Is he an officer on the "Manning?"
A. Yes, sir; he is first lieutenant.
Q. Is this the gentleman sitting by Mr. McGinn?
A. Yes, sir.
Mr. SULLIVAN. That is all.
(Examination of Mr. Schumer closed.)

663 Mr. GEORGE H. COLLINWOOD, a witness produced on behalf of the Government, in rebuttal, and having been duly sworn, testified as follows:

Q. (By Mr. McGINN.) Mr. Collinwood, do you know where you were on the 10th day of June, 1901?
A. Yes, sir.
Q. Where?
A. I was in the cabin on the Behring Sea side called Charley Rosenberg's cabin.
Q. On what island?
A. On Unimak Island.
Q. Do you know where Cape Lapin is?
A. Well, I know where it lies. I never was there.
Q. Do you know how close this cabin that you were in on that day was to Cape Lapin?
A. I should judge it must be, according to the looks on the map, about ten or twelve miles.
Q. Do you know where Shaw Bay is?
A. I think I do.
Q. Where is this cabin that you were in on the 10th of June with reference to Shaw Bay?
A. It is north and east.
Q. How far?
A. About four or five miles.
Q. I will ask you to examine this map and state whether or not you are able to point out the cabin that you were in on the 10th day of June.
A. That being False Pass, this being Unimak Pass, this being
664 Cape Lapin, this being Otter Point, this is the corner of Shaw Bay; there is a little cabin on the hill and another at the creek that comes down the mountain. We left that cabin on the 10th. After prospecting these mountains on Monday, the 10th, we came to this cabin on the river. It stands back, I should judge, one-half or three-quarters of a mile on the beach; there is one big river coming down this way and another coming down this way. That is known as Charley Rosenberg's cabin.
Q. What kind of a cabin is it?
A. It is a cabin with a sod roof and sod sides, with two doors.
Q. Do you know whether or not there is the ruins of any other cabin around there?
A. There is the ruins of a small cabin about nine feet long and four feet wide—four or five feet.
Q. How are you able to state that you were at this cabin on the 10th day of June?
A. I know I was there because I kept a diary.

Q. Have you got that diary with you?
A. Yes, sir; I have.
Q. I will ask you to produce it and refer to it. Where were you on the night of June 10th?
A. The night of June 10th I stayed all night in that cabin.
Q. When did you leave there?
A. On the morning of the 11th.
Q. Who was with you on that trip?
A. Mr. Charles Scott.
Q. Where is he?
665 A. At Unga.
Q. Do you know whether or not Mr. Charles Scott kept a diary?
A. Yes, sir.
Q. Do you know where it is?
A. Mr. Scott has it.
Q. What Scott?
A. Mr. J. C. Scott's brother.
Q. Was there anyone else present with you at that cabin that night besides Mr. Scott and yourself?
A. No, sir.
Q. Did you see the defendant, Fred Hardy, there?
A. No, sir.
Q. Did you see three other persons there?
A. No, sir.
Q. Mr. Collinwood, when did you first become acquainted with Mr. George Aston?
A. On Saturday night, the 15th day of June.
Q. Where?
Mr. SULLIVAN. We object to that as immaterial, irrelevant, and not rebuttal.
The COURT. Objection overruled.
Mr. SULLIVAN. Exception.
A. I met him at Otter Cove, at our camp.
Q. From that time up to the 20th day of June of this year, how often did you see Aston?
A. I seen him all the time.
Q. That is, you mean all the time? What do you mean by that?
666 A. He was with me all the time; he slept with me from the night of the 15th until they went away.
Q. When did he leave?
A. On the 20th.
Q. With whom?
A. With Mr. Hardy, the defendant.
Mr. MCGINN. That is all. You may cross-examine.

667 Cross-examination:

Q. (By Mr. SULLIVAN.) Did you not say a few minutes ago that you left this cabin on the 10th of June?
A. No, sir; I said I left on the morning of the 11th.
Q. Did you not say the tenth?

A. No, sir.
Q. Did you testify before in this case?
A. Yes, sir.
Mr. SULLIVAN. That is all.
Mr. MCGINN. I will offer this diary in evidence, if the court please.
Mr. SULLIVAN. We object to the introduction of it, as it is immaterial and irrelevant.
The COURT. Objection sustained.
Mr. MCGINN. That is all.
(Examination of Mr. Collinwood closed.)

668 Mr. J. C. SCOTT, a witness produced on behalf of the Government, in rebuttal, having been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) Mr. Scott, I believe you stated in your testimony that George Aston arrived at your camp on the 7th of June, 1901.
A. Yes, sir.
Q. Do you know where George Aston was on the 8th day of June, 1901?
A. If my memory serves me right he was in camp; he left on the 9th for Cape Lazareff, with my son Charles, and Cecil Newton.
Q. What did they leave in?
A. They left in the "Keno," of Seattle, our boat.
Q. When did they return?
A. I think they remained there three days; I could not answer that positively.
Q. Do you know where Aston was on the 12th day or the 13th day or the 14th day?
A. He was with some of our party from the time that he arrived until the morning of the 20th, the day that he went away, either at camp or at Cape Lazareff.
Q. From the morning of the 7th until the morning of the 20th day of June, was George Aston continually with your party?
A. With the exception of when he went to Cape Lazareff for our goods with the boys.
Q. Who was with him at that time?
A. Sometimes my son and sometimes Cecil Newton.
Q. Do you know the day on which they left?
A. They left on one trip on the 9th.
669 Q. The day that Mr. Aston and Mr. Collinwood left?
A. No, sir; I could not say that. It was the last trip that was made.
Q. What was the longest time that Aston was away from your camp?
A. Not more than three days.
Q. Where did he go?
A. Cape Lazareff.
Q. How far was that?
A. About 12 miles by water; we considered it about 18 by land.
Q. Would it take a person three days to go there and return?
A. No, sir; they could go up in six hours by boat.
Q. Are you personally aware of whether they were ever detained by the weather when going to Cape Lazareff?
Mr. SULLIVAN. We object to that question.
The COURT. Objection sustained.

Q. (By Mr. SULLIVAN.) You were a witness before in this case on behalf of the prosecution, Mr. Scott?

A. Yes, sir.

Q. Did Hardy and Aston leave your camp together?

A. What I consider the camp, they left in their boat together; yes, sir.

Q. (By Mr. MCGINN.) When was that?

A. That was on the morning of the 20th of June.

Q. I do not remember, Mr. Scott, whether I asked you in your testimony in chief whether or not you had made an examination of this rifle.

670 Mr. SULLIVAN. We object to that as it is not rebuttal testimony.

The COURT. Objection sustained.

(Testimony of Mr. Scott closed.)

671 Mr. GEORGE ASTON, a witness produced on behalf of the Government, in rebuttal, having been duly sworn, testified as follows:

Q. (By Mr. MCGINN). Where were you on the 10th day of June, 1901?

A. In the sloop "Keno," belonging to Mr. J. C. Scott and party.

Q. Where?

A. On the Pacific side of Unimak Island.

Q. Near what place?

A. Part of the day we were in Otter Cove and part of the day we were in the Pacific Ocean, between the points of Cape Lazareff and Otter Cove.

Q. How far distant is that from Cape Lapin?

A. I do not exactly know.

Q. About how far?

A. The distance down the pass from the Behring Sea to the Pacific Ocean is about twenty-five or thirty miles.

Q. Just state the distance from Cape Lazareff to Cape Lapin, as near as you can, by water.

A. In the neighborhood of eighty of ninety miles?

Q. Where had you spent the night of June 10th?

A. To the best of recollection it was spent partly in camp at Cape Lazareff loading provisions into the sloop "Keno."

Q. Who was with you?

A. Charles Scott and Cecil Newton.

Q. Where were you on the 9th of June?

A. At Scott's camp?

Q. Where were you on the 8th of June?

A. At Mr. Scott's camp and in the sloop "Keno."

672 Q. When did you arrive at Scott's camp?

Mr. SULLIVAN. We object to that question.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

The COURT. Allowed.

A. I arrived at Mr. Scott's camp about lunch time.

Q. What day?

A. Friday, I think it was; Friday, June 7th.

Q. Where were you the 11th day of June?

A. We were in the sloop "Keno" in the Pacific Ocean on the south side of Unimak Island, between the points of Otter Cove and Cape Lazareff.

Q. How near to False Pass?

A. About eighteen or twenty miles.

Q. How near to Otter Cove?

A. Almost the same distance.

Q. Where were you on the 12th?

A. To the best of my recollection we arrived at Mr. Scott's camp with a load of provisions.

Q. At Otter Cove?

A. Yes, sir.

Q. Where were you on the 12th or 13th day of June, 1901?

A. I think we were at Scott's camp at Otter Cove. I am not exactly positive. We were in camp at Otter Cove or in the sloop "Keno."

Q. Where were you on the 14th?

A. I believe we were at Lazareff, loading or attempting to load some lumber into the sloop "Keno;" some that belonged to Mr.
673 Scott's outfit.

Q. Where were you on the 15th?

A. I believe we were in camp at Cape Lazareff; Charles Scott, jr., was with me, and I believe Cecil Newton. If I remember rightly we were caught there under a stress of weather.

Q. Well, do you know where you were?

A. I was on the Pacific side of Unimak Island.

Q. Who was with you?

A. Charles Scott, jr., was.

Q. When did you first meet Mr. Collinwood?

A. I am not exactly positive; it was between the 15th and 17th of June.

Q. From the 15th or the 17th of June were you with him very much of the time?

A. Between the 15th and the 20th I occupied the same tent that he did and was in his presence I should say almost continuously.

Q. Were you on the 10th day of June, 1901, in this cabin of Charley Rosenberg's, near Cape Lapin, being the same cabin where you hid these guns?

A. I was not.

Q. Were you ever in that cabin in company with three other persons, one of these persons being Jack, the other John, and the other known as the defendant Hardy?

A. I was not.

Q. Did you on the 10th day of June—did you on returning to this cabin see the defendant Hardy there?

A. No, sir.

Q. Did you, on the 10th day of June, 1901, on returning to this
674 cabin that I have designated, being the cabin of Charley Rosenburg, with three other persons, you at that time carrying a shotgun and the two other persons carrying rifles, did you on coming to this cabin see the defendant Hardy?

A. I did not have a shotgun in my possession; I did not see the cabin;

I was not coming in the direction of the cabin, and I did not see Hardy on that date.

Q. Did you at that time and at the same place, after having supper, take the defendant to the rear of the cabin, some twenty, thirty, or forty feet, and tell him that the three men in there—that he had better look out, that the three men in there were bad men; that they had stolen these provisions; that you believed they had committed a murder, or words to that effect?

A. I was not anywhere in the vicinity of the cabin at that time.

Q. Did you, at the same time and place, and during the same conversation, show him this watch? (Plaintiff's Exhibit J.)

A. I had not seen that watch until the morning of June 20th. I had no conversation with him at the time. No, sir; I could not do it.

Q. Why could you not?

Mr. SULLIVAN. We object to that.

The COURT. Overruled.

Mr. SULLIVAN. Exception.

A. Because I was not anywhere in the vicinity of the cabin at the time.

Q. Did you, at that same time and same place, propose to the defendant Hardy that you and he should steal the goods and provisions
675 of three persons that occupied the cabin, and whom you told him were fishermen off the fishing schooner "Dove," and did you at that time tell him that he had better get away from the island?

A. No, sir; that would be impossible; I could not throw my voice that far.

Q. Did you, at the same time and place, tell him that these men had committed a murder, committed a crime?

A. No, sir; I had no knowledge of anything of the kind; had not seen Fred Hardy.

Q. Did you, at that time, on or about the 10th or 11th day of June, enter into an agreement with Fred Hardy to steal the provisions and revolvers of these three persons occupying this cabin?

A. No, sir.

Q. Did you go hunting with Fred Hardy on the 11th day of June, 1901, the defendant Hardy carrying at that time a Marlin rifle and you carrying a shotgun?

A. No, sir; I had not seen Hardy from the time that we had our dinner in the mess room of the schooner "Arago," on the first Sunday in June, until the evening of the 19th of June, when I saw him at Otter Cove, on the sand spit between False Pass and Otter Cove.

Q. Did you, in accordance with an agreement, or did you on that date, when you were hunting, tell Hardy that these three parties wanted you to go to Marzovio to purchase a Winchester rifle?

A. No, sir.

Q. Did you in accordance with the plan of the agreement
676 that Hardy said that you and he entered into at that time—did you, on the 14th day of June, take a dory, take a blanket, a shotgun, and some provisions and leave this cabin for Marzovio?

A. No, sir; that would be an utter impossibility.

Q. Did you, before leaving that cabin, on or about the 14th, or between

the 10th day of June, 1901, and the 14th day of June, 1901, agree with Hardy that you would meet him either at Marzovio, the fishing station, or Scott's camp or Dora Harbor?

A. No, sir; I had not seen Hardy from the time that we had our dinner on the "Arago," on the 2nd day of June, until the evening of the 19th day of June.

Q. Did you, between the 10th day of June, 1901, and the 14th or 15th day of June, 1901, agree with said Hardy, in Rosenberg's cabin near Cape Lapin, that you should go to Marzovio and that he should, on the following day, come to Scott's camp, and that you would meet him there or at Marzovio, and did you agree with him that when Hardy went to Scott's camp that he should tell a story that he was a fisherman from the "Arago;" that he had come ashore for the purpose of hunting for bear; that he was accompanied by another party; that they had gone in the mountains hunting for bear; that when they returned the boat was gone; that they then found a cabin, on which was a sign to the effect that this was a sailor's home, and upon which cabin there was a notice that all lost or wrecked fishermen were privileged to enter this cabin and take what they needed; and did you further agree that Hardy should tell the story that he and his companion entered this cabin, and upon entering
677 found a skeleton of a person in bed, but that the skeleton showed evidence of rats having eaten the meat off; that he should tell these people that they took this skeleton out of the cabin and buried it; that they cooked their supper and stayed there; that during that night his partner got up and left him, and that he had not seen him since, and that he should tell these people that in this cabin there were blankets, provisions, guns, and reloading outfits. Did you agree with him to tell that story?

A. No, sir; there are no telegraphic or telephone communications on the island. And as I had not seen him from the 2nd to the 19th, it would be impossible for me to enter into any such agreement.

Q. While you were with the defendant, Hardy, were you—were you with the defendant, Hardy, at this cabin on the 30th day of June, the time you saw Charley Rosenberg there, the time when you hid the guns there?

A. I was with the defendant, Hardy, at Rosenberg's cabin on or about the 29th of June, 1901, but I could not say the exact date.

Q. The time you saw Rosenberg there?

A. Yes, sir; I was with him at that time.

Q. That was the time you hid the guns, was it not?

A. It was a day or two later that the guns were hidden.

Q. The day that you hid the guns, was that the day after Charley Rosenberg left the cabin?

A. It was.

Q. Were you with Hardy the night that Rosenberg was there?

A. I was.

678 Q. Were you with him at the cabin prior to that?

A. I believe to the best of my recollection I was.

Q. While you were at that cabin at that time, did you go to a place about one hundred and fifty feet distant from that cabin and get any provisions?

A. I did not.

Q. Did you get a half sack of flour, ten or fifteen pounds of bacon, one can of baking powder, a can of milk, and some sugar, and take it from this place about one hundred and fifty yards distant from the cabin and carry it to the cabin?

A. No, sir; we carried the provisions a greater distance than that. From a point designated as the "cache."

Q. You leading the way to that cache?

Mr. SULLIVAN. We object to that question.

The COURT. Objection sustained.

Mr. MCGINN. That is all. Take the witness.

679 Cross-examination:

Q. (By Mr. SULLIVAN.) Are you still in charge of the United States marshal here?

A. I have no knowledge of any difference in my condition.

Q. Are you still in the charge of the United States marshal at Unalaska?

A. Yes, sir.

Q. Are you capable of telling the jury whether or not you are in charge of the marshal?

A. To the best of my belief I am.

Q. Do you know or not?

A. I could hardly say one way or the other. I believe myself to be. That is the nearest I can come to it.

Mr. SULLIVAN. That is all.

Q. (By Mr. MCGINN.) You have never been released from custody, have you?

A. No, sir.

Mr. MCGINN. That is all.

(Testimony of Mr. Aston closed.)

680 Court to jury: Gentlemen of the jury, you will remain in charge of the bailiff as usual, until to-morrow morning at nine thirty o'clock, and you will come with him again into the court room.

In the meantime you will not talk with anybody; you will not receive any communications from anybody upon this or any other subject; you will not talk about this case among yourselves, nor endeavor to reach an opinion until the case is finally submitted to you.

And thereupon, the court was declared adjourned until the hour of half past nine o'clock to-morrow morning, Saturday, September seventh, 1901.

681 UNALASKA, ALASKA, NINE THIRTY O'CLOCK, A. M.,
Saturday, September Seventh, 1901.

All present; proceedings resumed pursuant to adjournment.

Mr. CECIL NEWTON, a witness produced on behalf of the Government, in rebuttal, and having been duly sworn, testified as follows:

Q. (By Mr. MCGINN.) What is your name?

A. Cecil Newton.

Q. You were on the witness stand before?

A. Yes, sir.

Q. Do you know where you were on the 10th day of June, 1901?
A. I was at Cape Lazareff.
Q. Who was with you at the time?
A. Charles Scott and George Aston.
Q. Where were you on the 9th day of June, 1901?
A. At Otter Cove at our camp.
Q. Do you know where George Aston was at that time?
A. He was with me.
Q. Where were you on the 8th day of June, 1901?
A. I was at Cape Lazareff. I started out for Cape Lazareff.
Q. Well, about what place were you?
A. Out on the water near Cape Lapin.
Q. Do you know where Cape Lapin is?
A. No, sir.
Q. Were you in the vicinity of Otter Cove from the 7th of June until the 20th of June?
A. Yes, sir.
682 Q. Do you know where George Aston was during that time?
A. He was with me part of the time.
Q. Do you know where he was on the 11th day of June?
A. He was at Cape Lazareff.
Q. With whom?
A. With Charley Scott, and I do not know whether I was there on the 11th or not.
Q. Do you know where he was on the 12th?
A. I could not say; he was with some of our party.
Q. Do you know where he was on the 13th?
A. No, sir; I do not.
Mr. McGINN. That is all.

683 Cross-examined:

Q. (By Mr. SULLIVAN.) You say he was with Scott on the 7th of June?
A. And myself.
Q. You were also with him?
A. Yes, sir.
Q. Where is Mr. Scott now?
A. At Unga.
Q. He is not here?
A. No, sir.
Q. Do you swear that *that* you were with him on the seventh day of June?
A. He was with myself and Charley Scott at Cape Lazareff, part of the time, and part of the time at Otter Cove.
Q. How old a man is Charley Scott?
A. Twenty-one years.
Q. A man of ordinary intelligence?
A. Yes, sir.
Q. Is he a son of this Mr. Scott who has been a witness here?
A. Yes, sir.
Mr. SULLIVAN. That is all.

684 Mr. HANSON, a witness produced on behalf of the Government, in rebuttal, having been sworn, testified as follows:

Q. (By Mr. McGINN.) Mr. Hanson, where were you on the 10th day of June of this year, if you know?

A. I was to a fishing station on Unimak Island.

Q. What fishing station have you reference to?

A. The one adjoining Otter Cove; right below Otter Cove.

Q. Did you see George Aston on that date?

A. No, sir.

Q. Did you see George Aston on the 9th day of June, 1901?

A. No, sir.

Q. When did you first see George Aston?

Mr. SULLIVAN. We object to that question on the ground that it is not rebuttal testimony.

The COURT. Objection overruled.

Mr. SULLIVAN. Exception.

A. On the evening of the seventh.

Q. Did you see him on the 8th day of June?

A. He went away that same night.

Q. Who with?

A. With young Scott and Newton.

Q. Where did he leave from?

A. Cape Lazareff.

Q. He left from Cape Lazareff?

A. To Otter Cove.

Q. Do you know where he was on the 11th day of June?

A. They went down after another load.

Q. Who with?

685 A. Newton and Scott.

Q. Who was with them?

A. No one that I know of.

Q. Was George Aston with them?

A. Yes, sir.

Q. Do you know where Aston was on the 12th of June?

A. I think he was down to camp; at Cape Lazareff.

Q. Do you know where he was on the 13th day of June?

A. I think he was down there.

Q. When did he leave there?

A. I could not tell you.

Q. About what time?

Mr. SULLIVAN. We object to that as leading.

The COURT. Overruled.

Mr. SULLIVAN. Exception.

Q. About what time, as near as you can tell?

A. I could not tell exactly what day he left there.

Q. Was it in August, July, January, or February?

Mr. SULLIVAN. We object to that as leading the witness.

The COURT. Objection sustained.

Q. What part of June?

Mr. SULLIVAN. We object to that.

The COURT. Overruled.

A. About between the 7th and the 15th; something like that.
Q. That he left your camp?
A. Well, for the second trip.
Q. When did he leave your camp with Fred Hardy?
A. Some time about the 20th.

686 Q. From the 7th day of June, the time that you testified that Aston arrived there, until the 20th day of June of the same year, and that you have testified that Aston and Hardy left there, I will ask you if you saw Aston often during that time?
A. Yes, sir.
Q. About how often?
A. I seen him three or four times.
Mr. McGINN. That is all; take the witness.

687 Cross-examination:

Q. (By Mr. SULLIVAN.) How long had you been on the island?
A. Since the 28th day of May.
Q. This year?
A. Yes, sir; '91; 1901 I mean.
Q. This year?
A. Yes, sir.
Q. Did you meet George Aston on the 1st day of June this year?
A. No, sir.
Q. On the 2nd?
A. No, sir.
Q. On the 3rd?
A. No, sir.
Q. On the 4th?
A. No, sir.
Q. Did you meet him on the 6th?
A. No, sir.
Q. What was your business, what line, Mr. Hanson?
A. Prospecting.
Q. You came there as a prospector?
A. Yes, sir.
Mr. SULLIVAN. That is all.
(Testimony of Mr. Hanson closed.)

688 Mr. CHARLEY ROSENBERG, a witness produced on behalf of the Government, in rebuttal, being duly sworn, testified as follows:

Q. (By Mr. McGINN.) Mr. Rosenberg, when you arrived at your cabin about ten miles east of Cape Lapin, where you met the defendant, Fred Hardy, and George Aston, on or about the 30th day of June, of this year, I will ask you to state whether or not, when you first entered that cabin, you saw any provisions there, that had been left by any other persons than yourself?
A. No, sir.
Q. Did you at that time find in the cabin, on the day that you met the defendant and George Aston there, a half sack of flour, ten or fifteen pounds of bacon, a can of baking powder, a can of milk, and a baking-powder can of sugar?

A. No, sir.
Q. Did you see a half sack of flour hanging from the ceiling, when you went in the cabin at that time?
A. No, sir; I saw an empty one.
Q. Had that been left by any other person than yourself?
A. No, sir; I left it there with flour in it and found it empty.
Q. When did you first see George Aston?
Mr. SULLIVAN. We object.
Mr. MCGINN. I withdraw the question.
Mr. MCGINN. That is all.
Mr. SULLIVAN. That is all.

689 Mr. VASILA NOSIAKOF, a witness produced on behalf of the Government, in rebuttal, having been sworn, testified as follows:
Q. (By Mr. MCGINN.) What is your name?
A. Vasila Nosiakof.
Q. Do you know George Aston?
A. Yes, sir.
Q. Where did you first see him (George Aston)?
A. Third of June.
Q. Of what year?
A. Of this year.
Q. Where did you meet him?
A. Close to the pass; I get him.
Q. You mean False Pass?
A. No; Marzovio Pass.
Q. What did he do; what did you do?
A. He came ashore there with five fish in the dory; then I came to him; I took him to my tent.
Q. Where did he stay the night of the 3rd of June?
A. He stayed there a couple of nights; then I told him I got to move; some other place further east.
Q. When did he leave your place?
A. On the 5th of June I left from there.
Q. When did Aston leave?
A. The same day; I sent him to Marzovio.
Q. How did you remember that date was the third day of June that you saw Aston?
A. Well, I done put it in writing in my book.
690 Q. Have you got your book?
A. Yes, sir.
Q. Do you keep a diary—do you keep a log?
A. Yes, sir; well, I don't write all things.
Q. Have you got the book?
A. Yes, sir.
Q. Is it written in English or Russian?
A. It is in Russian.
Q. Do you make this memorandum, this writing?
A. Yes, sir.
Q. You make it yourself?
A. Yes, sir.

Q. When you make it?
A. This spring.
Q. Do you write down everything as it occurred?
A. No; every day I don't put down everything that happened; this book so small.
Q. Where did you get this from that is in here? Do you write it in any piece of paper first? You got something down June 1st—did you write it that day? You write it every day?
A. The day of the week; that is all. Something I see I put it down.
Q. You did that time?
A. Yes, sir.
Q. State from that diary whether it states that you saw George Aston on the third.
Mr. SULLIVAN. We object.
The COURT. Objection sustained.

691 Cross-examination:

Q. (By Mr. SULLIVAN.) Do you know Charles Scott?
A. No, sir.
Q. Never saw him?
A. No, sir.
Q. How long have you lived on the island?
A. About two months.
Q. Where did you live before you went to the island?
A. At Marzovio. I did not understand you.
Q. How long did you live on this island?
A. About two months.
Q. Do you know a man by the name of Charley Scott?
A. I never see him.
Q. Ever hear of him?
A. No, sir.
Q. Do you know anybody by the name of Scott on the island?
A. No, sir.
Q. What were you doing on the island?
A. Hunting.
Q. Where did you go from to the island; did you go from Dutch Harbor?
A. I go there once to pass, about the 3d of May; then 5th of May I move.
Q. Where did you move on the 5th of May; where from? Where did you move to?
A. To the westward, about ten or twelve miles from the pass.
Q. Who was with you then?
A. Five Bydarkies with me.

692 Q. When you went over to the island, where did you go from?
A. We came there always hunting sea otter; it is called Otter Point.
Q. Can you write?
A. Yes, sir; very little; I have never been in English school.
Q. Can you tell me where you were before you went to the island—the Unimak Island?
A. I been home before I go there.

Q. Where is your home?
A. Marzovio.
Q. That is where you live all the time?
A. Yes, sir.
Q. You were born there?
A. No; I was born in Unimak Island.
Q. Then, you have been at Marzovio and Unimak Island all your life?
A. Yes; I came to Marzovio in 1870.
Mr. SULLIVAN. That is all.
(Testimony of Mr. Nisiakof closed.)

693 Mr. SULLIVAN. It is admitted by the defense that the maximum amount for which a single money order can be issued at an office designated as a money-order office is one hundred dollars, and at an office designated as a "limited money-order office," five dollars.

When a larger sum is to be sent, additional orders must be obtained, but postmasters are instructed to refuse to issue in one day, to the same remitter, in favor of the same payee, on any one post-office of the fourth class, money orders amounting in the aggregate to more than three hundred dollars, as such office might not have funds sufficient for immediate payment of any large amount.

Fractions of a cent are not to be introduced.

(Edition of November 8th, 1896.)

Mr. MCGINN. That is all our evidence.

Mr. SULLIVAN. The defense rests.

Mr. SULLIVAN. I will ask, if the court please, that the record shall disclose the fact that the defense requests that all instructions to the jury shall be in writing.

COURT (to counsel). Gentlemen, the court does not intend to limit you in your presentation of this cause to the jury at all; it is an important case and you can use your own discretion.

COURT (to jury). Gentlemen of the jury, this case is almost finished, and I sincerely hope that the jury will remember strictly and carefully what the court has said to you.

694 Mr. SULLIVAN. It is admitted by the defense that the maximum amount for which a single money order can be issued at an office designated as a money-order office is one hundred dollars, and at an office designated as a "limited money-order office," five dollars.

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Mr. MCGINN. That is all our evidence.

Mr. SULLIVAN. The defense rests.

The COURT. That is the end of your evidence?

Mr. MCGINN. That is the end of our evidence.

Mr. SULLIVAN. I will ask, if the court please, that the record shall disclose the fact that the defense requests that all instructions to the jury shall be in writing.

The COURT (to jury). Gentlemen of the jury, you will remember the admonition that the court has given to you so frequently not to discuss this case with anyone, nor to permit anyone to discuss it with you. You will go in charge of the bailiff and get your supper and be back here at seven o'clock.

695 About having communication from anyone from the outside: You will not converse with any person or permit any person to converse with you, nor will you communicate with any person whatever. You will retire in charge of the bailiff and return here at 1.30 o'clock.

And thereupon the court was ordered to stand adjourned until the hour of one thirty o'clock p. m. on this day, Saturday, September 7th, 1901.

And thereafter, and at the hour of one thirty o'clock p. m., all being present, proceedings were resumed pursuant to adjournment.

And thereupon, on behalf of the Government, Mr. McGinn addressed the jury, and Mr. Sullivan, on behalf of the defense, addressed the jury.

696 UNALASKA, ALASKA, ONE THIRTY O'CLOCK P. M., *Saturday, September 7th, 1901.*

All present. Proceedings resumed pursuant to adjournment.

And thereupon, Mr. McGinn, on behalf of the Government, closed the argument to the jury.

Mr. SULLIVAN. We object to counsel introducing as to when the Tennessee Regiment was mustered into service.

The COURT. Objection sustained, and the jury will be instructed accordingly.

Mr. SULLIVAN. We object to the counsel being allowed to state who was Secretary of War, and that the jury be instructed not to be influenced by who was Secretary of War.

The COURT. Objection sustained, and jury instructed so.

Mr. SULLIVAN. I will ask the court to instruct the jury to disregard any statement made by counsel that Collinwood proved by his diary that he was in the cabin on the 9th day of June, on the ground that the diary was not introduced in evidence.

The COURT. Gentlemen of the jury, you are instructed that Mr. Collinwood's diary was not introduced in evidence in this case, and the remarks of counsel are not based on evidence, and the jury should disregard them.

COURT (to jury). Gentlemen of the jury, you will remember the admonition that the court has given to you so frequently not to discuss this case with anyone nor to permit anyone to discuss it with you.

697 You will go in charge of the bailiff and get your lunch and be back here at seven o'clock this evening.

And thereupon the court was ordered to stand adjourned at this time until the hour of seven o'clock p. m. this day, Saturday, September seventh, 1901.

And thereafter, and at the hour of seven o'clock p. m., all being present, proceedings were resumed.

Mr. SULLIVAN. I will ask the court to instruct the jury to disregard

any remarks made by counsel, addressed to the defendant, in relation to the death of Florence Sullivan and P. J. Rooney.

The COURT. Gentlemen of the jury, you will disregard any remarks made by counsel, addressed to the defendant, in relation to the death of P. J. Rooney or Florence Sullivan.

The COURT. The court will take a recess until ten o'clock Monday morning, subject to the rendering of this verdict.

And thereupon the court addressed the defendant, Fred Hardy, as follows:

Fred Hardy, you have been indicted by the grand jury in the district of Alaska for the crime of murder in the first degree, and have been accused of killing Con Sullivan on Unimak Island on the seventh day of June, 1901, in this district.

698 You have been tried before a jury of twelve citizens; you have been very ably defended by two of the best attorneys in the district of Alaska, and upon all of the evidence submitted to the jury, you have been found guilty of murder in the first degree for killing Con Sullivan.

The verdict of the jury is, that you are guilty of murder in the first degree as charged in the indictment, and for that offense the law itself fixes your punishment as that of death by hanging.

The court has nothing whatever to do with fixing the punishment, but that you, and the twelve citizens who tried you as jurors, may be satisfied that the court feels as they do in the matter, the court says now, that after listening to the evidence carefully and patiently, I am satisfied, as a juror ought to be, that you are guilty of murder in the first degree for the killing of one Con Sullivan at the time and place mentioned in the indictment.

The verdict of the jury agrees with my own judgment and my conscience would be clear if I had been a juror in reaching the same verdict which they reached in your case.

The law provides that when a verdict is rendered by a jury after a trial, such as was rendered in your case, that the punishment of death must be inflicted by hanging the defendant by the neck until he be dead, and the law provides that the United States marshal of this district shall perform the judgment of the court in that respect.

699 The law also provides that the execution shall take place not less than sixty days after a judgment is entered, and not more than ninety days thereafter.

In view of the verdict of the jury, and upon the verdict in accordance with the law it is now the sentence of the court that you be taken hence by the United States marshal and confined in the United States jail at Nome, Alaska, until Friday, the sixth day of December, 1901, and that between the hours of ten o'clock in the morning and three o'clock in the afternoon of that day you be, by the United States marshal of this district, hanged by the neck until you are dead, for the crime of killing Con Sullivan on the seventh day of June, 1901. The court will now sign the decree and order to that effect.

(Finish.)

700 That after the testimony was finished, and after argument of counsel was heard, the court submitted the following charge or instructions to the jury:

701 In the United States district court for the district of Alaska, 2nd division. Unalaska term.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* FRED HARDY, DEFENDANT. } Instructions to the trial jury.

GENTLEMEN OF THE JURY: The defendant in this case is accused by the indictment with the charge of murder in the first degree; the indictment charges that on the 7th day of June, 1901, in the district of Alaska, the defendant, Fred Hardy, unlawfully, feloniously, purposely, and of deliberate and premeditated malice, killed one Con. Sullivan, by then and there unlawfully, feloniously, purposely, and of deliberate and premeditated malice shooting him the said Con. Sullivan with a loaded rifle.

In the trial of a criminal case, and this is such a case, the judge and jury have each important though separate functions to perform. All issues of law must be tried by the judge; all issues of fact by the jury.

In this case it will be your duty to return a general verdict of not guilty, or guilty of the crime charged in the indictment or some inferior crime included therein, which general verdict necessarily includes a final determination by you of questions both of law and fact; yet you are bound, nevertheless, and I instruct you that it is your duty, to receive as law what is laid down as such by the court. All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and
702 other rules of evidence are to be decided by the court, and all discussions of law addressed to it; and whenever the knowledge of the court is made evidence of any fact by law, and disclosed by the court to the jury, it is your duty to accept it as conclusive; but all questions of fact presented by the evidence admitted upon the trial must be decided by the jury, and all evidence thereon addressed to them.

You are instructed that you should not permit any influence whatever to sway your judgment in reaching a verdict in this case, except the evidence introduced on the trial and the law as given you by the court; that the defendant is accused of the crime, is detained in custody, and is indicted therefor, are not of themselves any evidence of his guilt, and no juror in this case should permit himself to be to any extent whatever influenced against the defendant for these reasons.

In the introduction of testimony it happens for legal reasons the court refuses to allow some testimony which is offered to be received or considered by the jury; if any such testimony has been ruled out by the court in this case, you should not let that fact or any knowledge gleaned by you from the offer influence your judgment in the slightest particular; such offered but excluded matters are not a part of the evidence in this case, and you must not let them sway your minds in reaching your verdict; nor are you permitted to consider any knowledge, information, or

evidence, in arriving at your verdict, except that received from the testimony of witnesses sworn and examined before the jury and in the presence of the defendant.

It is made the duty of the court by statute to instruct the jury, and you are now hereby instructed that you are the judges of the effect and value of all evidence addressed to you in this case; but you are further instructed that your power of thus judging the effect of evidence
703 is not arbitrary, but is to *to* be exercised with legal discretion and in subordination to the rules of evidence.

You are instructed that you are not bound to find a verdict in conformity with the declarations of any number of witnesses, which do not produce conviction in your minds against a less number or other evidence satisfying to your minds. The purpose of introducing testimony before you is to ascertain the truth or falsity of the facts alleged in the indictment; the law is that where a number of witnesses testify directly opposite to each other, the jury are not bound to find in conformity with the declarations of the greater number against a lesser number, where they are satisfied that the lesser number are testifying truthfully; you have the right and it is your duty to determine from the appearance of the witnesses on the stand, their manner of testifying, their apparent candor and fairness, their apparent intelligence or lack of it, and from all the evidence offered and admitted on the trial, which witnesses are most worthy of credit, and to give credit accordingly.

You are instructed that you are the judges of the credibility of all the witnesses examined before you and of the weight to be attached to the testimony of each and all of them; you are not bound to take the testimony of any witness as absolutely true, and you should not do so if you are satisfied from all the facts and circumstances proved on the trial that such witness is mistaken in the matters testified to by him or that his testimony is untrue or unreliable; you are instructed that a witness wilfully false in one part of his testimony may be distrusted in others.

You are instructed that the laws of Alaska provide that in the trial of an indictment like this the defendant shall, at his own request, but not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury under the instructions of the
704 court; when the defendant offers himself as a witness in his own behalf, he shall be deemed to have given the prosecution a right to cross-examine him the same as any other witness. The defendant in this case was sworn, examined, and cross-examined as any other witness, and you are now instructed that the credit to be given to his testimony is left solely to the jury under the instructions of the court, herewith given to you.

The mere possession by the defendant, Fred Hardy, of the property of Con Sullivan, and known to have been in Sullivan's possession at the time of the murder, if you find that defendant had possession of it after the homicide, is not sufficient of itself to justify a conviction; it is a circumstance, however, which, with all the other evidence, may be considered by you in arriving at your verdict.

You are instructed that an accomplice in the commission of a crime is one who is concerned with the person indicted in its commission, whether he directly commits the act constituting the crime or only aids or abets in

its commission, though not present; if you shall find and believe from the evidence in this case that any witness for or against the defendant was in any way concerned in the commission of the crime for which this defendant is now on trial, whether by directly committing the act constituting the crime or by aiding or abetting in its commission, whether present or not, such witness would be an accomplice therein; and you are instructed that a conviction can not be had against the defendant upon the testimony of any such accomplice unless he be corroborated by such other evidence as clearly connects the defendant therewith, and you are further instructed that the corroboration is not sufficient if it merely show the commission of the crime or the circumstances of the commission. If you shall find and believe from the testimony in this case any witness herein was an accomplice in the commission of the crime
705 charged against the prisoner and now on trial, you should act upon such testimony with great care and caution and subject it to careful examination in the light of all the testimony in the case, and you ought not to convict upon such testimony alone, unless after careful examination of such testimony you are satisfied beyond any reasonable doubt of its truth, and that you can safely rely thereon, and that it has been corroborated by other testimony connecting the defendant with the commission of the crime beyond a reasonable doubt.

You are instructed that oral admissions of the defendant on trial made out of court should be acted upon by you with great caution. The credit and weight to be given to them depends very much upon what they are. If you shall find and believe from the evidence herein beyond a reasonable doubt that Con Sullivan, for the murder of whom this defendant is now on trial, was killed at the time, place, and in the manner alleged in the indictment, and it is further proved by the evidence beyond a reasonable doubt that the defendant was so situated at that time that he had an opportunity to commit the crime charged, and his oral admissions, if you find any were made, are consistent with such proof and corroboration of it, then you may give such credit and weight to such oral admissions as you find were made by the defendant as you think they are entitled to receive from you, subject to the caution heretofore given you.

You are instructed that in criminal cases, and this is a criminal case, the guilt of the accused must be established by the evidence, beyond a reasonable doubt, before the jury can find him guilty of the crime charged in the indictment or any lesser crime necessarily included therein. A reasonable doubt is that state of the mind which, after a full comparison and consideration of all the evidence, both for the prosecution and
706 the defense, leaves the minds of the jury in that condition that they cannot say that they feel an abiding faith amounting to a moral certainty, from the evidence in the case, that the defendant is guilty of the charge laid in the indictment. If you have such a doubt, if your conviction of the defendant's guilt, as laid by the indictment, does not amount to a *normal* certainty from the evidence in the case, then the court instructs you that you must acquit the defendant.

You are instructed that in this case the law raises no presumption against the prisoner on trial, but every presumption of the law is in favor of his innocence; and, in order to convict him of the crime alleged in the indictment, or any lesser crime necessarily included therein, every material fact necessary to constitute such crime must be proved beyond a

reasonable doubt; and, if you entertain any reasonable doubt upon any single fact or element necessary to constitute the crime, it is your duty to give the prisoner the benefit of such doubt, and acquit him.

In determining the weight to be given to the testimony of the different witnesses in this case, you should take into account the interest or want of interest they have in the case, their manner on the stand, the probability or improbability of their testimony, with all other circumstances before you which can aid you in weighing their testimony. The defendant has testified as a witness, and you should weigh his testimony as you would that of any other witness. You may consider his interest in the result of the case, his manner, and the probability or improbability of his testimony.

The court instructs the jury that circumstantial evidence is legal and competent in criminal cases; and if it is of such a character as to exclude every reasonable hypothesis other than that the defendant is
707, 708 guilty it is entitled to the same weight as direct testimony. You are instructed that what is meant by circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the defendant; and if these facts and circumstances are sufficient to satisfy you of the defendant's guilt beyond a reasonable doubt, then such evidence is sufficient to authorize you to find a verdict of guilty. To authorize a conviction on circumstantial evidence alone, however, the circumstances should not only be consistent with the prisoner's guilt, but they must be inconsistent with any other rational conclusion or reasonable hypothesis, and such as to leave no reasonable doubt in the minds of the jury of the defendant's guilt.

MURDER IN THE FIRST DEGREE.

The defendant in this case is accused by the indictment of the crime of murder in the first degree. It is the law of this territory that whoever, being of sound memory and discretion, purposely and either of deliberate and premeditated malice or in perpetrating or attempting to perpetrate any robbery kills another, is guilty of murder in the first degree. You will notice, and I instruct you, that the law makes these two subdivisions of murder in the first degree, both of which are necessary for you to consider in this case.

First. Whoever, being of sound memory and discretion, purposely, and of deliberate and premeditated malice, kills another, is guilty of murder in the first degree. One is of sound memory when his mind is normal, healthy, and not diseased, and when he is able readily to recall previous thoughts, events and actions; and one is of sound memory and discretion when he is thus of healthy normal mind, is able to distinguish between right and wrong as to the particular act under con-
709 sideration, and is mentally free to act according to a rational judgment. You are instructed that to find the defendant guilty of the crime charged in this indictment, or any lesser crime necessarily included therein, you must first find and believe from the evidence beyond a reasonable doubt, not only that the defendant committed the homicide charged in the indictment, but that at that time he was of sound memory and discretion as above explained to you. To justify you in finding a verdict of guilty of murder in the first degree under this sub-

division in addition to the above you must also find and believe from the evidence beyond a reasonable doubt that the homicide, if committed by the defendant, was done purposely—that is, that it was done intentionally and with deliberate and premeditated malice. Malice, as used in this connection, does not mean mere spite, ill will, or dislike, as it is ordinarily understood, but it means that condition of the mind which prompts one person to take the life of another without just cause or justification, and it signifies the state of disposition which shows a heart regardless of social duty and fatally bent on mischief. Deliberate and premeditated malice is when the intention to unlawfully take the life of another, without just cause or excuse, is deliberately formed in the mind of the slayer, and that determination meditated upon before the fatal blow is given. There need be no appreciable space of time between the formation of the intention to kill and the killing; they may be as instantaneous as successive thoughts. Then I instruct you as a matter of law that if you find and believe from the evidence in this case beyond a reasonable doubt that the defendant, Fred Hardy, did at the time and place and by the means alleged in the indictment kill the deceased, Con. Sullivan, and that the defendant was then and there of sound memory and discretion, and that such killing was done purposely and of deliberate and premeditated malice, you should find the defendant guilty of murder in the first degree.

710 Second. It is my duty now to instruct you in relation to the second subdivision of the law defining murder in the first degree. Whoever, being of sound memory and discretion, purposely, in perpetrating or attempting to perpetrate any robbery, kills another, is guilty of murder in the first degree. One is of sound memory when his mind is normal, healthy, and not diseased, and when he is able readily to recall previous thoughts, events, and actions; and one is of sound memory and discretion when he is thus of healthy, normal mind, is able to distinguish between right and wrong as to the particular act under consideration, and is mentally free to act according to a rational judgment. You are instructed that to find the defendant guilty of the crime charged in this indictment, or any lesser crime necessarily included therein, you must first find and believe from the evidence, beyond a reasonable doubt, not only that the defendant committed the homicide, but that at that time he was of sound memory and discretion as above explained to you. To justify you in finding a verdict of guilty of murder in the first degree under this subdivision, in addition to the above, you must also find and believe from the evidence, beyond a reasonable doubt, that the killing, if done by the defendant, was done purposely—that is, that it was done intentionally, and in perpetrating or committing, or in attempting to perpetrate or commit a robbery. Whoever by force or violence, or by putting in fear, steals and takes from the person of another anything of value, is guilty of robbery. Then I instruct you as a matter of law that if you find and believe from the evidence in this case, beyond a reasonable doubt, that the defendant, Fred Hardy, did at the time and place, and by the means alleged in the indictment, kill the deceased, Con. Sullivan, and that the defendant was then and there of sound memory and discretion,

711 and that such killing was done purposely and in perpetrating or attempting to perpetrate a robbery, you should find the defendant guilty of murder in the first degree.

MURDER, SECOND DEGREE.

You are now instructed that by the law of Alaska, upon an indictment for a crime consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment and guilty of any degree inferior thereto, provided the evidence justifies such lesser verdict. This power, however, is not an arbitrary power to be exercised or held by you at pleasure, but in its exercise you are performing one of the most important of your functions as a jury, under the solemnity of your oaths, and you are instructed that your action in so doing should be taken only in subordination to the law and the evidence as you get them from the court and the witnesses on the witness stand.

If upon the law and the evidence before you, you shall find and believe beyond a reasonable doubt that the defendant is now guilty of murder in the first degree, as heretofore explained to you, then it would be your duty to return that verdict, and you would have no right or power to find him guilty of the lower offense; it would be your duty under the law to return that verdict which the law and the evidence justified; but if from the evidence, or want of it, you have a reasonable doubt about some one or more of the elements constituting the crime of murder in the first degree having been proved, then it would be your duty to find the defendant not guilty of murder in the first degree, and consider the lesser offense of murder in the second degree.

You are instructed that whoever purposely and maliciously, except under circumstances constituting murder in the first degree, kills another, is guilty of murder in the second degree. I instruct you that before you can find the defendant guilty of murder in the second degree,
712 you must first find and believe from the evidence beyond a reasonable doubt that at the time of the homicide, if committed by the defendant, he was of sound memory and discretion, as heretofore fully explained to you in the definition of murder in the first degree. You are instructed that purposely, as used in this definition of murder in the second degree, means that such killing was done intentionally or by design; maliciously means that the act of killing was done without just cause or excuse by one regardless of his social duty toward the slain, and fatally bent on mischief. Then I instruct you, as a matter of law, that if you shall find and believe from the evidence in this case beyond a reasonable doubt that at the time and place and by the means alleged in the indictment the defendant, being then and there of sound memory and discretion, did purposely and intentionally and maliciously, without just cause or excuse, and under circumstances not constituting murder in the first degree, kill the deceased, C[illegible]. Sullivan, you should find him guilty of murder in the second degree.

MANSLAUGHTER.

You are instructed that by the law of Alaska in all cases the defendant may be found guilty of any crime the commission of which is necessarily included in that with which he is charged in the indictment. In this case the defendant is charged in the indictment with the crime of murder in the first degree, and you are instructed that the crime of manslaughter,

as defined by the statute, is necessarily included in the crime of murder in the first degree, as charged in this indictment. Your power in this regard is not an arbitrary one, to be exercised or withheld at pleasure, but therein you are to be guided by the law as given you by the court and the evidence given by the witnesses on the trial. If, upon the law and the evidence before you, you shall find and believe beyond a
713 reasonable doubt that the defendant is now guilty of murder in the first degree or murder in the second degree, as heretofore explained to you by these instructions, then it would be your duty to return that verdict which the law and the evidence justifies, and you would have no right or power to find him guilty of the lower offense; but if from the evidence, or want of it, you have a reasonable doubt about some one or more of the elements constituting the crimes of murder in the first degree and murder in the second degree having been proved, then it would be your duty to find the defendant not guilty of the higher offense and consider the lesser crime of manslaughter.

You are instructed that whoever unlawfully kills another, except under circumstances constituting murder in the first degree or murder in the second degree, is guilty of manslaughter. You are instructed that before you can find the defendant guilty of manslaughter you must first find and believe from the evidence beyond a reasonable doubt that at the time of the homicide, if committed by the defendant, he was of sound memory and discretion, as heretofore explained to you in the definition of murder in the first degree. You are instructed that the word unlawfully, as used in the definition of manslaughter, means that the killing was done in violation of the law, without being excused or justified by law. The law justifies the killing of a human being in certain cases and excuses it in others. Any other killing than those is unlawful.

You are instructed that the killing of a human being is justifiable when committed by public officers or those acting in their aid and assistance and by their command, either—

First. In obedience to the judgment of a competent court.

Second. When necessarily committed in overcoming resistance to the execution of legal process or to the discharge of a legal duty.

714 Third. When necessarily committed in retaking persons charged with or convicted of crime who have escaped or been rescued.

Fourth. When necessarily committed in arresting a person fleeing from justice who has committed a felony.

You are instructed that the killing of a human being is also justifiable when committed by any person as follows:

Fifth. To prevent the commission of a felony upon such person or upon his or her husband, wife, parent, child, master, mistress, or servant.

Sixth. To prevent the commission of a felony upon the property of such person, or upon property in his possession, or upon or in any dwelling house where such person may be.

Seventh. In the attempt by lawful ways and means to arrest a person who has committed a felony, or in the lawful attempt to suppress a riot or preserve the peace.

You are instructed that the killing of a human being is excusable when committed—

Eighth. By accident or misfortune in lawfully correcting a child, or in

doing any other lawful act, by lawful means, with usual and ordinary caution and without any unlawful intent.

Ninth. By accident or misfortune in the heat of passion, upon a sudden and sufficient provocation, or upon sudden combat, without premeditation or undue advantage being taken, and without any dangerous weapon or thing being used, and not done in a cruel or unusual manner.

You are instructed that any other killing of a human being by another than those which are justified or excused by the law, as specifically enumerated and described in the nine preceding clauses, is an unlawful killing, and is either murder in the first degree, murder in the second degree, or manslaughter, according as the law and the evidence shall determine under the instructions hereinbefore given to you.

715 Then I instruct you as a matter of law that if you shall find and believe from the evidence in this case beyond a reasonable doubt that at the time and place, and by the means alleged in the indictment, the defendant, being then and there of sound memory and discretion, and under circumstances not constituting either murder in the first degree or murder in the second degree, did unlawfully kill the said Con. Sullivan, you should find him guilty of manslaughter.

You are further instructed that if you shall find and believe from the evidence in this case that a felonious homicide was committed by the defendant by killing the said Con. Sullivan, as alleged in the indictment, of which fact you are the sole judges under the law and the evidence, then I instruct you that there is nothing in the evidence before you in this case to reduce the grade of the crime below manslaughter, and you should either find the defendant Fred Hardy guilty of murder in the first degree, guilty of murder in the second degree, guilty of manslaughter, or not guilty.

You are instructed that when it appears that the defendant has committed a crime, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of these degrees only, and if the consideration of the evidence in this case it appears that the defendant has committed a crime, and you have a reasonable ground of doubt whether he is guilty of murder in the first or second degree, then he can be convicted of the lowest, or murder in the second degree only; if, upon such consideration, you have such reasonable ground of doubt whether he is guilty of murder in the second degree or manslaughter, then he can be convicted of the lowest, or manslaughter only; and upon such consideration, if you find him not guilty of murder in the first and second degree and have any reasonable doubt

716 about his guilt of manslaughter you should find him not guilty.

You are further instructed that in all cases where the accused is found guilty of the crime of murder in the first degree the jury may qualify their verdict by adding thereto "without capital punishment," and whenever the jury shall return a verdict qualified as aforesaid the person convicted shall be sentenced to imprisonment at hard labor for life, and shall in no case suffer death by hanging or otherwise.

The court has prepared and hands you herewith five forms of verdict: (1) Guilty of murder in the first degree; (2) Guilty of murder in the first degree "without capital punishment"; (3) Guilty of murder in the

second degree; (4) Guilty of manslaughter; and (5) Not guilty. When, after deliberation, you shall unanimously agree upon one of these verdicts you will sign that one by your foreman and return it into court as your verdict; the others you will destroy.

You will take these instructions with you on your retirement into the jury room and return them with your verdict into court. You may now retire to consider your verdict.

717 Thereafter and on the 7th day of September, 1901, the jury in said cause returned a verdict of "Guilty of murder in the first degree" as charged in the indictment against the said defendant; and thereafter, within one day from the rendition of such verdict, the defendant duly filed a motion for a new trial in said cause, a copy of which is as follows:

In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

Comes now the defendant above named and moves the court to set aside the verdict in said cause and grant a new trial therein on the following grounds:

First. Irregularity in the proceedings of the court and jury.

Second. Insufficiency of the evidence to justify the verdict, and that the verdict is against the law.

Third. Error in law occurring at the trial, excepted to by the defendant.

JOHN W. CORSON,
P. C. SULLIVAN,
Attorneys for Defendant.

Service of the above accepted this 9th day of September, 1901, at Unalaska, Alaska.

JOS. K. WOOD,
United States District Attorney,
By JOHN L. MCGINN,
Deputy United States Attorney.

Filed in the U. S. district court, district of Alaska, second division, Sept. 9, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy.

718 Defendant's motion for a new trial was overruled by the court, to which ruling the defendant excepted, and exception allowed. That within one day after the rendition of the said verdict, the defendant

also filed a motion in arrest of judgment, a copy of which motion is as follows:

In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

Comes now the defendant above named and moves the court that no judgment be rendered upon the verdict of guilty in this cause, upon the following grounds:

First. That the grand jury by which the indictment was found had no legal authority to inquire into the crime charged.

Second. That the facts stated in the indictment do not constitute a crime and the indictment does not state facts sufficient to constitute an offense.

JOHN W. CORSON,
P. C. SULLIVAN,
Attorneys for Defendant.

Service of the above accepted this 9th day of September, 1901, at Unalaska, Alaska.

JOS. K. WOOD,
United States Attorney.
By JOHN L. MCGINN,
Deputy United States Attorney.

Filed in the U. S. district court, district of Alaska, second division, Sept. 9, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy.

719 Which motion in arrest of judgment was denied by the court, to which ruling of the court the defendant excepted, which exception was allowed.

Each, all, and every of the exceptions heretofore mentioned in this bill of exceptions were allowed by the court at the time such exceptions were taken.

That before the trial of the cause, the defendant was duly arraigned and entered a plea of "Not guilty."

After the verdict of the jury was returned on the 7th day of September, 1901, a judgment was duly rendered against the said defendant in accordance with the said verdict, and at the time of the rendition of such judgment the court, upon the application of the defendant, duly and regularly allowed the defendant sixty days within which to prepare and have settled his bill of exceptions in said cause.

720 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

The foregoing bill of exceptions is correct in all respects, and is hereby approved, allowed, settled, and made a part of the record herein. At the time of such allowance and settlement the plaintiff appeared by the assistant United States attorney, John L. McGinn, and the defendant appeared by his attorneys, P. C. Sullivan and John W. Corson.

Dated this 5th day of October, 1901.

JAMES WICKERSHAM,
Judge of the United States District Court for the District of Alaska, Second Division.

721 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

This cause having been brought on regularly before the court on this 5th day of October, 1901, upon the application of defendant for the settling and certifying of his proposed bill of exceptions, lately filed herein, and the time for such settling and certifying of said bill of exceptions having been duly extended by order of the court, and the said time not having yet expired—the plaintiff appearing by the assistant United States attorney, John L. McGinn, and the defendant appearing by his attorneys, P. C. Sullivan and John W. Corson—and there being no objections made on behalf of plaintiff to said proposed bill of exceptions:

Now, on motion of Messrs. P. C. Sullivan and John W. Corson, the defendant's attorneys,

It is hereby ordered that such proposed bill of exceptions heretofore filed by the defendant in this cause, as the same now stands, be, and it hereby is, settled as a true bill of exceptions in this cause, and that the same as so settled be now here certified accordingly by the undersigned, the judge of this court, who presided at the trial of this cause, and that said bill of exceptions, when so certified, be filed by the clerk.

JAMES WICKERSHAM,
Judge of the United States District Court for the District of Alaska, Second Division.

722 District court for the district of Alaska, division No. two.

THE UNITED STATES OF AMERICA
vs.
FRED HARDY.

Fred Hardy is accused by the grand jury of the district of Alaska, division No. two, by this indictment, of the crime of murder in the first

degree * * * committed as follows: That the said Fred Hardy on the seventh day of June, nineteen hundred and one, in the district aforesaid, unlawfully, feloniously, purposely, and of deliberate and premeditated malice, killed one Con Sullivan, by then and there unlawfully, feloniously, purposely, and of deliberate and premeditated malice shooting him, the said Con Sullivan, with a loaded rifle * * * contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Dated at Unalaska, in the district aforesaid, the 21st day of August, nineteen hundred and one.

JOSEPH K. WOOD,
District Attorney,
By JOHN L. MCGINN,
Assistant.

Witnesses examined before the grand jury: Owen Jackson, J. C. Scott, G. H. Collingwood, Cecil W. Newton, George H. Ashton, J. O. Sullivan, R. H. Whipple, L. Hansen.

(Endorsed:) No. 109, criminal. District court United States, district of Alaska, second division. The United States vs. Fred Hardy. Indictment. A true bill. C. D. Folger, foreman. Filed in the U. S. district court, district of Alaska, second division. Aug. 22, 1901. H. G. Steel, clerk. By John T. Reed, deputy. Joseph K. Wood, U. S. attorney, John L. McGinn, assistant. Vol. 1, page 88. C. A. B.

723 In the district court United States, district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY. } Motion.

Comes now the defendant and by his attorney moves the court for a continuance in said cause until the next term of this court, or for such time as will enable defendant to have a reasonable time in which to prepare for trial and to procure essential and material testimony for his defense.

This motion is based upon the affidavit of Fred Hardy, defendant, filed and served herewith.

JOHN W. CORSON,
P. C. SULLIVAN,
Atty. for Defendant.

Service by receipt of copy admitted at Unalaska this 2nd day of Sept., 1901.

J. K. WOOD,
United States Attorney,
By J. L. MCGINN, *Assistant.*

(Endorsed:) Filed in the U. S. district court, district of Alaska, second division. Sept. 2, 1901, at Unalaska. H. G. Steel, clerk. By John T. Reed, deputy. C. A. B.

724 In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA *vs.* FRED HARDY. } Order denying motion for continuance.

Upon the opening of the court the defendant, Fred Hardy, through his attorneys, John W. Corson and P. C. Sullivan, having made a motion in writing for a continuance of this cause until the next term of this court or for such other time as will enable him, the defendant, to have a reasonable time in which to prepare for trial and to procure essential and material testimony for his defense, and having in support of his said motion presented to the court two affidavits of himself, both verified the 2nd day of September, 1901, and the plaintiff in opposition thereto having presented to the court the affidavits of George H. Ashton, R. H. Whipple, Martin Fricker, Frank W. Lee, William C. Bowen, Charles Shoerner, James C. Scott, and John T. Reed, all verified the 2nd day of September, 1901, and the affidavits of James C. Scott and Cecil W. Newton, both verified this 3rd day of September, 1901. Now, upon reading and filing the aforesaid affidavits and after hearing P. C. Sullivan, one of the attorneys for defendant, in support of the motion for a continuance, and the court being fully advised in the premises and due deliberation being had thereon, it is hereby

Ordered, That the defendant's motion for a continuance be and the same hereby is denied. Exception by defendant's counsel to denial of motion and to court's ruling. Exception allowed.

Done in open court at Unalaska, Alaska, this 3rd day of September, 1901.

JAMES W. WICKERSHAM,
District Judge.

725 (Endorsed:) No. 109, criminal. In the United States district court for the district of Alaska, second division. The United States of America *vs.* Fred Hardy. Order denying motion for continuance. Filed in the U. S. district court, district of Alaska, second division, Sept. 3, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy. Journal 1, page 416. C. A. B.

726 In the United States district court for the district of Alaska, 2nd division, Unalaska term.

UNITED STATES OF AMERICA *vs.* FRED HARDY, DEFENDANT. } Verdict No. 1.

We, the jury in the case of the United States of America against Fred Hardy, defendant, do find the defendant guilty of murder in the first degree, as charged in the indictment.

E. L. BOSQUI,
Foreman.

(Endorsed:) No. 109 criminal. In the United States district court for the district of Alaska, second division. United States of America vs.

Fred Hardy. Verdict filed in the U. S. district court, district of Alaska, second division, Sept. 7, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy. Vol. 1, page 435.

727, 728 In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

Comes now the defendant above named and moves the court to set aside the verdict in said cause and grant a new trial therein on the following grounds:

First. Irregularity in the proceedings of the court and jury.

Second. Insufficiency of the evidence to justify the verdict and that the verdict is against the law.

Third. Error in law occurring at the trial excepted to by the defendant.

JOHN W. CORSON,
P. C. SULLIVAN,
Attorneys for Defendant.

Service of the above accepted this 9th day of September, 1901, at Unalaska, Alaska.

JOS. K. WOOD,
United States District Attorney.
By JOHN L. McGINN,
Deputy United States Attorney.

(Endorsed:) ≠109 Crim. U. S. district court, district of Alaska, second division. The United States of America vs. Fred Hardy. Motion for new trial filed in the U. S. district court, district of Alaska, second division, Sept. 9, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy. C. A. B.

729 In the United States district court for the district of Alaska, second division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

Comes now the defendant above named and moves the court that no judgment be rendered upon the verdict of guilty, in this cause, upon the following grounds:

First. That the grand jury by which the indictment was found had no legal authority to inquire into the crime charged.

Second. That the facts stated in the indictment do not constitute a crime, and the indictment does not state facts sufficient to constitute an offense.

JOHN W. CORSON,
P. C. SULLIVAN,
Attorneys for Defendant.

Service of the above accepted this 9th day of September, 1901, at Unalaska, Alaska.

JOS. K. WOOD,
United States Attorney.
By JOHN L. MCGINN,
Deputy U. S. Atty.

(Endorsed:) No. 109, Crim. U. S. district court, district of Alaska, second division. The United States of America *vs.* Fred Hardy. Motion that no judgment be entered upon the verdict. Filed in the U. S. district court, district of Alaska, second division, Sept. 9, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy. C. A. B.

730 In the United States district court for the district of Alaska, 2nd division, Unalaska term.

UNITED STATES OF AMERICA *vs.* FRED HARDY, DEFENDANT. } Order overruling motion for new trial and in arrest of judgment.

This cause coming on to be heard on this 9th day of Sept., 1901, the defendant appearing in person and by his attorneys, P. C. Sullivan and John W. Corson, and the United States by its assistant district attorney, John McGinn; and the court having read and examined the motion made and filed in this court for a new trial and in arrest of judgment by the defendant, and having heard counsel and being fully advised in the premises,

It is ordered that said motion for a new trial be and it is overruled, and each ground upon which it is based and asked for is denied and overruled; that the motion in arrest of judgment be and it is hereby overruled, and each ground upon which it is based and asked for is denied and overruled; to each of said rulings, upon each ground of the motion for new trial and in arrest of judgment the defendant excepts, and his exception is allowed upon each several denial of each ground upon each motion.

Dated Unalaska, Sept. 9th, 1901.

JAMES WICKERSHAM,
District Judge.

(Endorsed:) No. 109, Cr. In the United States district court for the district of Alaska, second division. United States of America *vs.* Fred Hardy. Order overruling motion for new trial and in arrest of judgment. Filed in the U. S. district court, district of Alaska, second division, Sept. 9, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy. Vol. 1, page 441, C. A. B.

731 In the United States district court for the district of Alaska, 2nd division, Unalaska term.

UNITED STATES OF AMERICA *vs.* FRED HARDY, DEFENDANT. } Order.

It appearing to the court from the records and files in this cause that the defendant was found guilty of murder in the first degree, as charged

in the indictment, for killing Con Sullivan on Unimak Island, in the district of Alaska, on June 7th, 1901, and that said verdict was returned by the trial jury in this cause into this court on the 7th day of September, 1901; that said jury was thereupon polled and each and every one thereof agreed to said verdict in open court, whereupon said verdict was filed in said court; that thereafter the defendant filed a motion for a new trial and in arrest of judgment, which was by the court overruled in all things on the 9th day of Sept., 1901.

It is now ordered that the United States marshal of this district and division do now produce the said Fred Hardy before this court at the hour of 2 o'clock p. m. this day to receive the sentence provided by law upon conviction of the crime for which he was in this cause convicted by the said verdict. Defendant excepts and exception allowed.

Dated this 10th day of Sept., 1901.

JAMES WICKERSHAM,
District Judge.

(Endorsed:) No. 109 Cr. In the United States district court for the district of Alaska, second division. United States of America *vs.* Fred Hardy. Order to marshal to produce the defendant for sentence. Filed in the U. S. district court, district of Alaska, second division, Sept. 10, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy. Vol. 1, page 445, C. A. B.

732 In the United States district court for the district of Alaska, 2nd division, Unalaska term.

UNITED STATES OF AMERICA
vs.
FRED HARDY, DEFENDANT. } Judgment.

This cause coming on to be heard upon this 10th day of Sept., 1901, before the United States district court for the district of Alaska, second division, at the special term thereof at Unalaska, the defendant, Fred Hardy, is now brought personally into court, and is now, at the time of making and signing this judgment, personally present in said court, and is represented herein also by his attorneys, P. C. Sullivan and John W. Corson; and it now appearing to the court from the record and files in this cause that the defendant was heretofore, and on the 23rd day of August, 1901, indicted by the grand jury of said district and division, then regularly called and sitting in this court at Unalaska, for the murder of one Con Sullivan on Unimak Island, in this district, on the 7th day of June, 1901; that thereafter the defendant appeared personally in this court, was arraigned, plead not guilty, and was thereafter and on the 3rd, 4th, 5th, 6th, and 7th days of Sept., 1901, duly tried in this court before a trial jury regularly called, impanelled, and sitting; that he personally appeared before said court and jury on each of said days with his said attorneys, and such evidence and other proceedings were heard that on the 7th day of Sept., 1901, the *the* trial jury returned a verdict finding the defendant guilty of murder in the first degree; that thereupon said jury was polled and each juror of the said jurors, as his name was called by the clerk, said that the said verdict so rendered was his verdict; that thereupon

the verdict was filed with the clerk of this court; thereafter
733, 734 and on the 9th day of September, 1901, the defendant, by his attorneys, Sullivan and Corson, filed a motion for a new trial herein, and also a motion in arrest of judgment, which said motion for a new trial was upon hearing before the court overruled and denied by the court upon every ground specified therein, to each of which rulings defendant separately excepted and exception was allowed, also the motion in arrest of judgment was upon each ground thereof overruled and denied by the court; to which action the defendant excepted upon each ground, and each exception was allowed; that after overruling and denying the said motions for a new trial and in arrest of judgment, and on the 9th day of Sept., 1901, the court, by order duly entered of record, directed the United States marshal for this district to produce and bring the said Fred Hardy, defendant, before this court personally in open court on the 10th day of Sept., 1901, at hour of 2 o'clock p. m., that judgment of execution might then be passed upon the said Fred Hardy in accordance with the verdict of said jury and the laws of Alaska. And now on this 10th day of Sept., 1901, at the hour of 2 o'clock p. m., the defendant, Fred Hardy, is brought into court by the marshal and is personally present when this judgment is rendered and signed, and is also represented now herein by his attorneys, P. C. Sullivan and John W. Corson, and the United States is also represented herein by John McGinn, esq., and the defendant being asked if he has anything to say why sentence of death should not now be pronounced against him, says nothing to forbid it. Deputy United States district atty., and now all the record herein and the law and the premises being considered, and upon the said verdict of guilty of murder in the first degree, as charged in the indictment, and the defendant being now personally present in open court to receive sentence. It is the judgment of this court, upon the verdict of said jury in this action and filed with the clerk of this court, that the defendant, Fred Hardy, is now guilty of murder in the first degree, as charged in the indictment, and that he suffer death by hanging as provided
735 by law. It is the judgment of this court, and is now hereby ordered, that the said defendant be taken hence by the United States marshal for the district of Alaska, for the second division thereof, and confined in the United States jail at Nome City, Alaska, and there be safely kept confined until Friday, the 6th day of December, 1901, and that on that day, at Nome City, Alaska, in the district of Alaska, the said United States marshal aforesaid shall, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon of that day, inflict upon the said defendant, Fred Hardy, the penalty and punishment of death by hanging him, the said defendant, Fred Hardy, by the neck until he be dead; that said execution shall take place in the presence of twelve bona fide inhabitants of the district of Alaska to be selected by the marshal; and the fact of the faithful performance of the marshal in carrying out the sentence of the court shall be certified by the said twelve inhabitants and filed with the clerk of this court, and that the said marshal make due and full return to this court of his actions in compliance with this judgment; that the clerk of this court prepare the warrant to enforce the judgment of death upon the said defendant in compliance with this judgment, and after the same is signed by the judge of this court and

attested by the clerk, with the seal of this court affixed, and that the same be drawn and delivered to the United States marshal in this district in compliance with the law and judgment.

In witness whereof I have hereunto set my hand as the judge of said district court at Unalaska, in said district, on the 10th day of Sept., 1901.

JAMES WICKERSHAM,
District Judge.

(Endorsed:) No. 109 Cr. In the United States district court for the district of Alaska, second division. The United States of America vs. Fred Hardy. Judgment. Vol. 1, page 452. Filed in the U. S. district court, district of Alaska, second division, Sept. 10, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy. C. A. B.

736 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

Now, on this 10th day of September, 1901, this cause coming on to be heard in open court upon the application of defendant for an extension of time, and for time in which to make, file, and serve and settle a bill of exceptions, assignment of errors;

And it appearing to the court that such application should be granted, it is ordered that the time for the defendant to make, file, and serve and settle his bill of exceptions in said cause be extended and fixed for on or before sixty days from this date.

Dated Sept. 10, 1901.

JAMES WICKERSHAM,
District Judge.

(Endorsed:) =109. In the United States district court for the district of Alaska, 2nd division. United States of America, plaintiff, vs. Fred Hardy, defendant. Order extending time to settle bill of exceptions. Filed in the U. S. district court, district of Alaska, second division, Sept. 10, 1901, at Unalaska. H. G. Steel, clerk, by John T. Reed, deputy. Vol. 1, page 447. C. A. B.

737 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

Fred Hardy, the defendant in the above cause, feeling himself aggrieved by the verdict of the jury and the judgment entered on the 10th day of September, 1901, comes now, by P. C. Sullivan and John W. Corson, his attorneys, and petitions this court for an order allowing said defendant to prosecute a writ of error to the honorable Supreme Court of the

United States, under and according *of* the laws of the United States in that behalf made and provided, and that all proceedings in this court, or under its orders, be suspended and stayed until a determination of said writ of error by the said Supreme Court of the United States.

And your petitioner will ever pray.

JOHN W. CORSON,
P. C. SULLIVAN,
Attorneys for Defendant.

Service of above petition admitted at Nome, Alaska, this 30th day of October, 1901.

JOSEPH K. WOOD,
United States District Attorney.
JOHN L. McGINN,
Assistant United States District Attorney.

738 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT. } Criminal.

Assignment of errors.

Comes now the defendant, plaintiff in error, and assigns error in the decision and judgment of the district court for the district of Alaska, second division, in said cause, as follows:

(I) That the United States district court for the district of Alaska, second division, erred in overruling the motion for a continuance, interposed by defendant, the plaintiff in error.

(II) The court erred in permitting one Kehoe, who was called as a juror, to be excused for a cause upon the application of the plaintiff.

(III) The court erred in not excusing one L. D. McLean as a juror, for a cause, upon the application of the defendant.

(IV) The court erred in permitting the plaintiff to propound to the juror, Hayden, the following question: "Have you any such conscientious scruples or opinion as would prevent or preclude you from rendering a verdict of 'guilty' where the penalty prescribed by law is death, upon what is known as circumstantial evidence?"

739 (V) The court erred in permitting the plaintiff to ask of Juror Johnson the following question: "Have you any such conscientious scruples or opinions as could prevent or preclude you from rendering a verdict of death in a case where the penalty prescribed by law is that of death?"

(VI) The court erred in permitting the plaintiff to propound to the juror last named also the following question: "Have you any such conscientious scruples or opinions which would prevent or preclude you from rendering a verdict of guilty in a case where the penalty prescribed by law is death upon circumstantial evidence?"

(VII) The court erred in permitting the witness, Jackson, to answer the following question propounded by plaintiff: "Mr. Jackson, you wrote on there June 15th; why was that?"

(VIII) The court erred in permitting the witness, Jackson, to answer the following question propounded by plaintiff, which is as follows: "What was your condition at the time you wrote it?"

(IX) The court erred in permitting the witness, Jackson, to answer the question propounded by plaintiff, which reads as follows: "What was the condition of your hands and feet when you got unto the top of the bluff there?"

(X) The court erred in permitting the witness, Jackson, to answer the following question propounded by the plaintiff: "How long did you continue to wear your socks?"

(XI) The court erred in permitting the witness, Newton, to answer the following question propounded by the plaintiff: "Might it not be on the 19th day of June?"

(XII) The court erred in permitting the witness, Aston, to answer the following question propounded by the plaintiff: "Did you
740 ever see him have a watch while he was aboard the 'Arago'?"

(XIII) The court erred in permitting the witness, Aston, to answer the following question propounded by the plaintiff: "You had no time to get any of these things in your dory, did you?"

(XIV) The court erred in permititng the witness, Aston, to answer the following question propounded by the plaintiff: "How did you expect to carry those provisions from the cache to Scott's camp?"

(XV) The court erred in permitting the plaintiff to introduce in evidence the statement, or purported statement, made by the defendant, Hardy, to one R. H. Whipple, United States commissioner, and the court erred in permitting the said Whipple to give any testimony in relation thereto.

(XVI) The court erred in permitting the witness, Whipple, to testify as to the statement purported to be made to him by said Hardy while in jail.

(XVII) The court erred in permitting the witness, Martin Tricker, to testify in the cause on behalf of the prosecution, against the objections of the defendant, that the name of the witness had not been endorsed upon the indictment.

(XVIII) The court erred in permitting the witness, Whipple, and other witnesses to testify on behalf of the plaintiff whose names were not endorsed upon the indictment.

(XIX) The court erred in permitting the witness, William C. Bowen, to testify in said cause, against the objections of the defendant.

(XX) The court erred in permitting the witness, William C. Bowen, to answer the following question propounded by the plaintiff:
741 "Are you positive that the defendant here is the same person that you saw at Alcatraz?"

(XXI) The court erred in permitting the witness, Frank W. Lee, to testify in said cause over the objection of defendant.

(XXII) The court erred in permitting the witness, Charles Schoemer, to testify in said cause over the objections of the defendant.

(XXIII) The court erred in permitting the witness, Hanson, to answer the following question propounded by the plaintiff: "When did you first see George Aston?"

(XXIV) The court erred in overruling the motion of defendant for a new trial.

(XXV) The court erred in overruling the first ground of said motion for a new trial, to wit, irregularity in the proceedings of the court and jury.

(XXVI) The court erred in overruling the second ground of the motion for a new trial, to wit, insufficiency of the evidence to justify the verdict and that the verdict was against the law.

(XXVII) The court erred in overruling the third ground of the motion for a new trial, to wit, error in law occurring at the trial and excepted to by the defendant.

(XXVIII) The court erred in overruling and denying defendant's motion in arrest of judgment in said cause.

(XXIX) The court erred in overruling the first ground of the motion in arrest of judgment, to wit, that the grand jury by which the indictment was found had no legal authority to inquire into the crime charged.

742 (XXX.) The court erred in overruling the second ground for the motion in arrest of judgment, which was as follows: That the facts stated in the indictment did not constitute a crime, and that the indictment did not state facts sufficient to constitute an offense.

(XXXI.) The court erred in holding that the evidence was sufficient to justify a conviction.

(XXXII.) The court erred in entering and rendering any judgment for conviction against the said defendant.

JOHN W. CORSON,
P. C. SULLIVAN,
Attorneys for Defendant.

The foregoing assignment of errors were filed and presented this 30th day of October, 1901, by P. C. Sullivan and John W. Corson, attorneys for the defendant, in the presence of Assistant United States Attorney John L. McGinn, the same being presented and filed at the same time as the petition for a writ of error and order of this court made for the issuance of such writ.

JAMES WICKERSHAM,
Judge of the United States District Court for the District of Alaska, Second Division.

Service of the foregoing assignment of errors hereby accepted this 30th day of October, 1901.

JOSEPH K. WOODS,
United States District Attorney.
JOHN L. MCGINN,
Assistant United States Attorney for the District of Alaska.

743 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,)
vs.
FRED HARDY, DEFENDANT.)

At a stated term, to wit, the August term of this court, for Unalaska, begun on the 19th day of August, 1901, for the district of Alaska, and

now on this 30th day of October, 1901, present the honorable James Wickersham, district judge for the district of Alaska, acting for the second judicial district, the judge who tried said cause, upon motion of P. C. Sullivan, attorney for defendant, and upon filing a petition for a writ of error and an assignment of errors,

It is ordered that a writ of error be, and is hereby, allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered and rendered herein.

JAMES WICKERSHAM,
Judge.

744 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT. } Criminal.

UNITED STATES OF AMERICA,
District of Alaska, ss:

Fred Hardy, being first duly sworn, on his oath deposes and says: That he is the defendant in the above-entitled action; that he has no means or property of any kind with which to prosecute his appeal in said action. He therefore asks the court that all proceedings on appeal be at the expense of the United States, and that the clerk of this court and the United States marshal be directed to issue and make copies of process and serve the same, which may be necessary therein.

FRED HARDY.

Subscribed and sworn to before me this 30th day of October, 1901.

G. B. BUOBAHEN,
Notary Public in and for the District of Alaska, residing at Nome, Alaska.

745 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT.

It appearing to the court that the said defendant has no means or property with which to prosecute an appeal in said action, and that he is desirous of taking an appeal therein,

It is now ordered that the said appeal be prosecuted without expense to said Fred Hardy, and that the officers of this court make all necessary transcripts, issue all necessary process, and serve the same in said cause, and that his appeal be at the expense of the United States.

Dated October 30, 1901, at Nome, Alaska.

JAMES WICKERSHAM,
Judge of the United States District Court for the District of Alaska, Second Judicial Division.

746 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* FRED HARDY, DEFENDANT. } Order staying execution of sentence.

Now, on this 30th day of October, 1901, this cause coming on regularly to be heard in open court, the defendant appearing by P. C. Sullivan and John W. Corson, and the plaintiff appearing by Assistant United States Attorney John L. McGinn,

It is ordered, adjudged, and considered by the court that all proceedings upon the judgment heretofore rendered against the said defendant in said cause and upon his sentence therein be, and the same is hereby, stayed until further order of this court, after receiving the final mandate from the Supreme Court of the United States, excepting that the United States marshal for the district of Alaska, second division, will still keep confined the said defendant in accordance with the judgment and sentence of this court; but the judgment and sentence of this court commanding that the said defendant be hanged on the 6th day of December, 1901, be, and the same is hereby, stayed until the third Friday in July, 1902, to wit, the 18th day of July, 1902, or until further order of this court.

The clerk of this court will issue a writ in accordance herewith directing the United States marshal for the district of Alaska, second division, and all his deputies, to refrain from executing the judgment and sentence of this court commanding the said defendant to be hanged on the 6th day of December, 1901, excepting that the said marshal and his deputies shall keep the said defendant confined during the appeal of said cause and until further order of this court.

JAMES WICKERSHAM,
Judge of the United States District Court for the District of Alaska, Second Division, and Acting Judge of said Judicial District in the absence of the Honorable Arthur H. Noyes.

747 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* FRED HARDY, DEFENDANT. } Criminal. Writ of error.

The President of the United States of America to the Honorable James Wickersham, judge of the United States district court for the district of Alaska, second division, greeting:

Because in the records and proceedings, as also in the rendition of the judgment which is in said district court before you, between the United States of America, plaintiff, and against Fred Hardy, defendant, a manifest error has happened, to the great prejudice and damage of the said defendant, as is said and appears by the petition herein, we being willing that error if hath been should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that

under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at Washington City, in the District of Columbia, together with this writ, so as to have the same at the said place in said city within sixty days from this date, that the records and proceedings aforesaid being inspected the said Supreme Court of the United States may cause further to be done therein to correct those errors what of right and according to the laws and customs of the United States should be done.

748 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of October, 1901.

Attest my hand and seal of the United States district court for the district of Alaska, at the clerk's office in the second division of the district of Alaska the day and year last above written.

[SEAL.]

H. G. STEEL,
Clerk of the United States District Court
for the District of Alaska, Second Division.

Allowed this 30th day of October, 1901.

JAMES WICKERSHAM,
Judge of the United States District Court
for the District of Alaska, Second Division.

749 UNITED STATES OF AMERICA,
District of ss:

being first duly sworn on oath, says: That he is the in the above-entitled action; that he has heard the foregoing read, knows the contents thereof, and believes the same to be true; that he makes this affidavit because .

Subscribed and sworn to before me this day of , A. D. 190 .

UNITED STATES OF AMERICA,
District of ss:

I, , clerk of the United States court, for the district of , do hereby certify that I have compared the foregoing copy with the original in the foregoing entitled cause, now on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said district court this day of A. D. 190 .

Clerk.

By *Deputy Clerk.*

(Indorsed:) No. . In the United States district court for the district of Alaska, second division. United States of America, plff.,

vs. Fred Hardy, deft. Writ of error. Filed in the office of the clerk of U. S. dist. court, Alaska, second division, at Nome, Alaska, Oct. 30, 1901. H. G. Steel, clerk. By John L. Reed, deputy clerk.

750 In the United States district court for the district of Alaska, second division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRED HARDY, DEFENDANT. } Citation.

The President of the United States of America to the United States of America and to Joseph K. Woods, United States attorney for the district of Alaska, second division, and John L. McGinn, assistant United States Attorney, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington City, District of Columbia, to be held at the said city of Washington, within sixty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Alaska, second division, wherein the United States of America is plaintiff and the said Fred Hardy is defendant, the defendant Hardy being plaintiff in error in said Supreme Court and you being defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 30th day of October, 1901, and of the Independence of the United States the one hundred and twenty-fifth.

JAMES WICKERSHAM,
United States District Judge for the District of Alaska, Second Division, thereof.

[SEAL.] H. G. STEEL,
Clerk of the United States District Court for the District of Alaska.

751 Service of the foregoing citation and receipt of a copy thereof admitted this 31st day of October, 1901.

JOSEPH K. WOOD,
United States Attorney for the District of Alaska, Second Division.

JOHN L. MCGINN,
Assistant United States Attorney for the District of Alaska, Second Division, Attorney for Plaintiff.

JOHN W. CONNOR,
B. C. SULLIVAN,
Attorneys for Defendant.

(Indorsed:) Filed in the office of the clerk of the U. S. dist. court, Alaska, second division, at Nome, Alaska, Oct. 30, 1901. H. G. Steel, clerk, by John T. Reed, deputy clerk.

752 *Certificate of clerk.*

UNITED STATES OF AMERICA,
District of Alaska, Second Judicial Division, Nome City, ss.

I, H. G. Steel, clerk of the United States district court for the district of Alaska, second judicial division, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from 1 to 751, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Fred Hardy, plaintiff in error, against the United States of America, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Nome, in the said second division of the district of Alaska, this 30th day of October, in the year of our Lord nineteen hundred and one, and of the independence of the United States the one hundred and twenty-fifth.

[SEAL.]

H. G. STEEL,
Clerk of the United States District Court for the District of Alaska, Second Judicial Division.

(Indorsement on cover:) File No. 18355, Alaska. D. C. U. S., term No. 502. Fred Hardy, plaintiff in error, *vs.* The United States. Filed December 18th, 1901.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

FRED. HARDY, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 502.

MOTION TO ADVANCE.

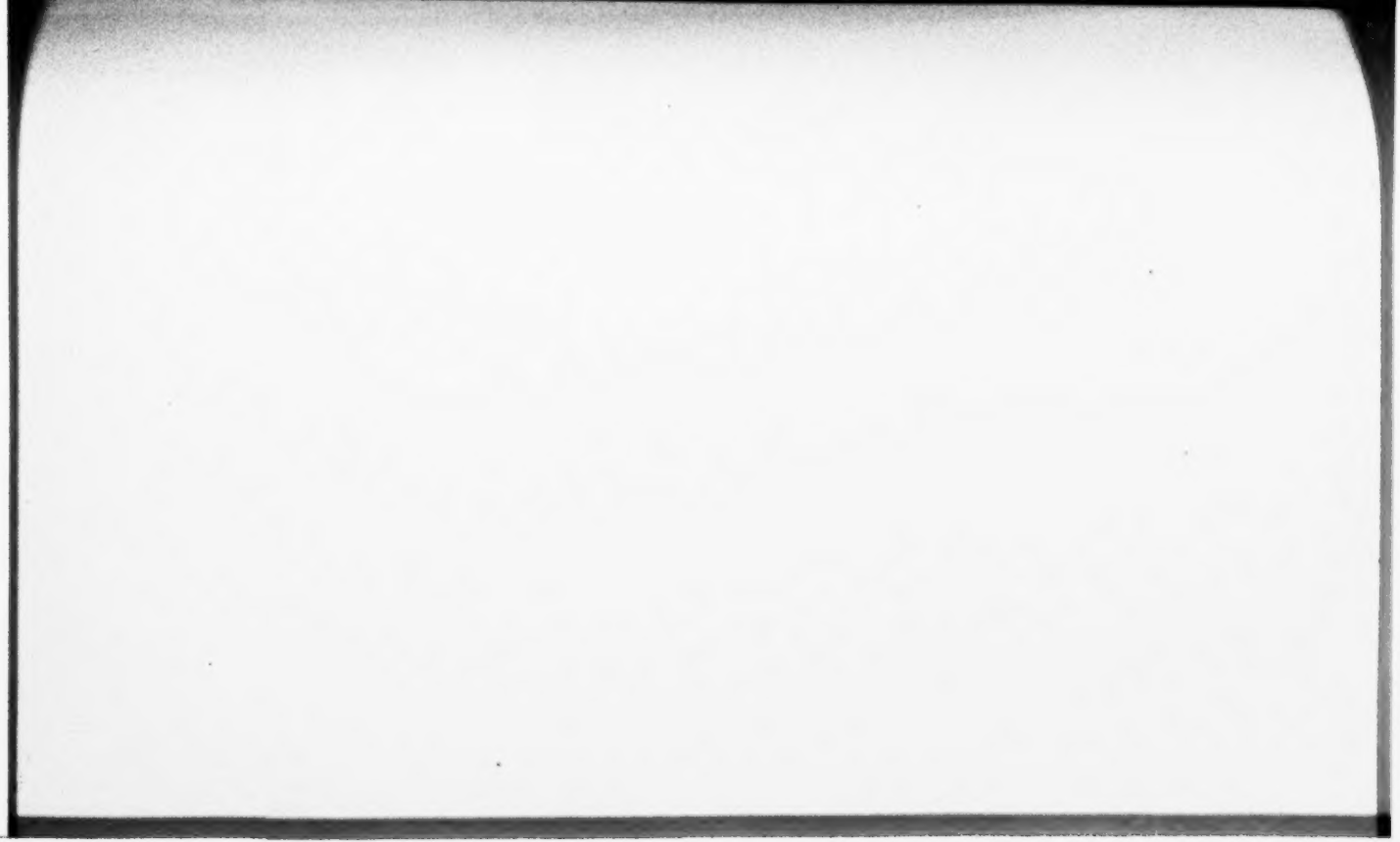
The plaintiff in error was indicted in the district court of Alaska on August 21, 1901, for the murder of one Con Sullivan. He was tried and found guilty as charged in the indictment on September 7, 1901, and sentenced to be hanged on December 6, 1901. The execution of the sentence has been stayed by the lower court until July 18 next, or until further order of the court.

In accordance with section 6 of the act of January 25, 1889 (25 Stats., 656), the Solicitor-General moves the court to advance the case on the docket and set it down for hearing on such day during the present term as may be convenient to the court.

Notice of this motion has been sent to counsel for plaintiff in error.

JOHN K. RICHARDS,
Solicitor-General.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 502.

FRED HARDY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

In Error to the District Court of the United States for the District of Alaska.

BRIEF FOR PLAINTIFF IN ERROR.

JOSEPH F. GOULD,

Att'y for Plaintiff in Error.

The plaintiff in error, Fred Hardy, was tried for murder of one Con Sullivan of Unalaska, District of Alaska, in September, 1901, found guilty of murder in the first degree and sentenced to be hanged December 6, 1901.

There are thirty-two assignments of errors. Counsel for plaintiff first received notice of the assignment of this case April 24, 1902, since which time he has examined the assignments and record so far as he has been able and respectfully submits that the following assigned errors I, IV and XV are reversible errors.

(I) That the United States District Court for the District of Alaska, Second Division, erred in overruling the motion for a continuance, interposed by defendant, the plaintiff in error.

(IV) The Court erred in permitting the plaintiff to propound to the juror Hayden, the following question. "Have you any such conscientious scruples or opinion as would prevent or preclude you from rendering a verdict of "guilty" where the penalty prescribed by law is death, upon what is known as circumstantial evidence?"

(XV) The Court erred in permitting the plaintiff to introduce in evidence the statement, or purported statement, made by the defendant Hardy to one R. H. Whipple, United States Commissioner, and the Court erred in permitting the said Whipple to give any testimony in relation thereto.

(V and VI are same as error IV.

Record discloses that Hardy was arrested at Unimack Island, Alaska, July 27th, committed to public jail at Unalaska and indicted August 22d for the murder of Con Sullivan, alleged to have been committed June 7th, 1901; arraigned August 24th; counsel appointed by the Court; a plea of "not guilty" entered, whereupon his counsel filed a motion for continuance, supported by the affidavit of Hardy (page 2) who alleged, among other matters, that Capt. Mackintosh and mate Johnson of Schooner "Arago," would, if present, testify that Hardy did not leave schooner until June 11th, subsequent to the killing of Con Sullivan; that in no other way could this fact be proven; that he had used due diligence; that they were essential and material witnesses to a fair and impartial trial; and that these facts could be proven by no other witnesses. Motion for continuance overruled. Trial began September 2, 1901. Motion should have been granted.

Where a party by the use of all the diligence appropriate to the circumstances and without fault on his part has been unable to make that preparation which is necessary to a fair trial, the Court should postpone the trial until a later day in the same term or continue the cause upon proper application..... The accused is entitled to a continuance where he is brought to trial so speedily after his arrest or indictment that he cannot make a proper defense or where he requires further time by reason of his close confinement in prison since his arrest.

Amer. & Eng. Enc'y of Pleading & Practice, Vol. 4, page 834.

Metts v. State, 29 Ga. 271.
Howell v. State, 5 Ga. 48.
State v. Lewis, 1 Bay (S. Car) 1.
State v. Brooks, 39 La. Ann. 239.
State v. Moultrie, 33 La. Ann. 1147.
Newman v. State, 22 Neb. 356.

Failure to grant motion was clearly error and abuse of discretion.

In Isaac vs. United States, 159 U. S., 487
Goldsby, alias Cherokee Bill vs. United States, 160 U. S., 70
Means vs. Bank of Randall, 146 U. S., 620

and a long line of authorities it is held that although a motion for continuance is purely a matter of discretion, yet it is subject to review when an abuse of discretion is shown.

The prevailing modern doctrine is, that although the presiding judge has a discretion in ordering the business of his court and determining whether it is proper or not to postpone or continue a case, yet if a refusal to continue a case constitutes a flagrant abuse of that discretion, it is sufficient ground, in accordance with the great preponderance of authority, for reversal of the judgment on appeal of error.

Amer. & Eng. Enc'y of Pleading & Practice, Vol. 4, page 904.

The discretion to be exercised is not to be an arbitrary but a sound judicial discretion.

Irving vs. State, 20 Tex. App. 12.
State vs. Poe, 76 Tenn., 647.

It is respectfully submitted that the record shows a clear abuse of discretion. As already stated Hardy was not represented by counsel until August

21th. No attorney could have been had prior to August 17th. Affidavit of Hardy is full and complete and fully covers objection raised in Isaac vs U. S., supra. The witnesses Mackintosh and Johnson were material witnesses. Hardy used all diligence possible. At no time after his arrest could he have obtained presence of these witnesses. They were on the seas on their way to California where they could have been reached in due time.

On trial for murder a continuance should be granted for the purpose of obtaining witnesses from Europe where no laches is attributable to the defendant and where only a short time has intervened between the arraignment and the trial.

State vs. Klinger, 43 Mo. 127.

In the case of felony the prisoner is entitled, after being furnished with the names of the witnesses against him, to a reasonable time in which to bring testimony from the counties in which such witnesses live.

United States vs. Stuart, Case No. 16, 401.

Testimony could not be obtained from any other witness. Prisoner was forced to trial without opportunity of procuring a single witness.

Testimony of Owen Jackson shows murder was committed June 5th, 1901 (page 89), although on page 94 he is uncertain of date, but thinks it was June 7th. Is unable to give any description of murderer. On page 89 it appears he supposed the killing to have been done by the Indians.

If Hardy could, as he states, have shown by testimony of Capt. Mackintosh and mate Johnson that he did not leave the "Arago" until June 9th or later,

then the jury could not of right have found him guilty of murder.

The evidence shows that Hardy on June 17th had in his possession property of Con Sullivan, but no witness has been produced by the Government who saw Fred Hardy on Unimack Island before that date; no evidence whatever that Fred Hardy was on Unimack Island on June 5th or 7th except statement of witness Aston (who was arrested at the same time Hardy was) who says: (page 331) "I had a conversation with Hardy and asked him when he left the 'Arago' and he said, 'three or four days after you did.'" Aston claims to have left June 2nd. This is all the testimony produced by the Government that Hardy was anywhere on Unimack Island before June 9th or 10th and clearly fails to show Hardy near the scene of the murder June 5th, 6th or 7th, or, in fact, any time up to June 17th. That Hardy stole is probable, but possession of property of Con Sullivan is not sufficient to show murder.

Counsel clearly understands that this court cannot review findings of fact by the jury, and that the action of the trial judge in overruling motion for new trial is not reversible error, yet these facts are submitted for the purpose of showing that Hardy's statement as to when he left the "Arago" is not disputed by a solitary Government witness. Nothing in the evidence clearly shows his story to be false or that Mackintosh and Johnson would not have corroborated him. Had Hardy been able to produce these witnesses, Hardy's whereabouts on June 5th and 7th could have been established beyond a doubt.

If Hardy was, as he says, on the "Arago" up to June 9th, he could not have committed the murder. From June 9th to June 17th he had ample opportunity to obtain property as he says he did in his testimony. Nothing in the case, I submit, shows his statement as to when he left the "Arago" to be false.

Situated as the prisoner was, remote from friends and acquaintances, the only persons who could testify as to his whereabouts on the day of the murder, on the high seas, to bring him to trial under these circumstances and force him to fight for his life without being able to procure witnesses, is an unwarranted and arbitrary abuse of the discretionary power of the court. If the action of the trial judge in refusing to grant a continuance in this case was not an abuse of discretion, it is difficult to conceive what would constitute an abuse.

It is respectfully submitted that it is not the policy or the spirit of our laws to railroad a man to his death until he has had a fair and reasonable opportunity to prepare his defense. To hold otherwise places the life of the prisoner in the hands of an arbitrary judge who can send a man to his death without that fair and impartial trial which of right belongs to every citizen.

ASSIGNMENT OF ERROR IV.

The Court erred in permitting the plaintiff to propound to the Juror Hayden the following question. "Have you any such conscientious scruples or opinion as would prevent or preclude you from rendering a verdict of "guilty" where the penalty

prescribed by law is death, upon what is known as circumstantial evidence?"

In Sections 3 and 4 of Chapter 429 of the statutes of the United States 1898-9, criminal laws for the District of Alaska it is provided that if a person is found guilty of murder in the first degree the jury may also find "without capital punishment." Questions should have been excluded as a misstatement of fact. It assumes that death penalty should necessarily follow verdict of murder in the first degree. It impresses this fact irrevocably upon the minds of the jurors and thereby tends to deprive the defendants of the benefits of said sections. The jurors cannot fail to be impressed by such interrogatories that in the case of verdict of murder in the first degree is rendered, under their oaths and under such examination as the court has permitted they are precluded from qualifying their verdict "without capital punishment," notwithstanding the presiding judge in his charge to the jury instructed them they could do so. Such a line of questions as was permitted by the Court virtually binds the jurors to see that the prisoner does not escape death penalty if the verdict of murder in the first degree is rendered and thereby prejudices the rights of the defendant.

The attorney for the Government should have been compelled to modify his question by striking out the words "where the penalty prescribed by law is death" and insert "where the penalty prescribed by law may be death." It is submitted that the Court was in error in permitting the question to be put, as set forth in above assignment.

ASSIGNMENT IN ERROR XV.

The Court erred in permitting the plaintiff to introduce in evidence the statement, or purported statement, made by the defendant Hardy to one R. H. Whipple, United States Commissioner, and the Court erred in permitting the said Whipple to give any testimony in relation thereto.

Statement of Hardy clearly inadmissible by Section 309 of Chapter 429 of U. S. Statutes already referred to.

First. Statement taken by committing magistrate of prisoner brought before him for examination, but before examination of the witness on the part of the Government had been closed before the magistrate.

Second. That it does not appear from the testimony that the magistrate informed the defendant that if he waived making a statement his waiver could not be used against him in trial.

Third. Also upon the ground that it does not appear from that statement that the defendant stated that he was asked his age or name, or where he was born, or where he resided, or how long he had resided in any place stated by him. Neither does it appear therefrom that he was asked or stated what was his business or occupation. Neither does it appear that he was asked by the committing magistrate to give any explanation that he might think proper under the circumstances appearing in the testimony against him, nor to state any facts which the defendant might think would tend to his exculpation. Nor does it appear that the answer of the

defendant or that any answer of the defendant was read to him as each question was asked.

Fourth. That the statement is not authenticated in the manner prescribed by statute.

Fifth. That there is no authentication by the United States commissioner to the effect that the defendant was informed of his rights as provided in section 307, title 1, or that after being so informed he made the statement.

Statement was introduced for the purpose of discrediting Hardy before the jury and thereby must be held injurious.

Jos. F. Gould
Atty for P.E.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

FRED HARDY, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
} No. 502.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

At the August term, 1901, of the district court of the United States for the district of Alaska, second division, held at Unalaska, Fred Hardy was indicted, charged with the murder of Con Sullivan on June 7, 1901, on Unimak Island (R., p. 370). After a motion for a continuance, which was denied (R., p. 16), Hardy was tried, and on September 7, 1901, was found guilty (R., p. 371), and sentenced to be hanged at Nome City on December 6, 1901 (R., p. 375). From this judgment a writ of error was sued out and the execution of the sentence stayed until the third Friday in July, 1902, or until the further order of the Alaska court (R., p. 381).

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Six days were consumed in the trial of the case, and the record covers 384 printed pages. There are 32 assignments of error (R., p. 377). No brief has been filed, and it is difficult to determine upon what opposing counsel will really rely. I have read all the testimony. To my mind it is absolutely convincing upon the point of Hardy's guilt. While the record teems with exceptions, I have been unable to find any ruling which appears to constitute prejudicial error. The exceptions are trivial. It seems to have been the policy of Hardy's counsel to except to everything. Even the few, comparatively speaking, which are relied upon in the assignments of error are hardly worth discussion. Nevertheless, I shall, as briefly as may be, endeavor in the course of the brief to cover them all.

ARGUMENT.

THE DENIAL OF A CONTINUANCE.

The first assignment is that the court erred in overruling the motion for a continuance. I shall discuss this now, not because the court's action needs defense, but because the affidavits submitted throw a sort of introductory light upon the criminal and the case.

The murders were committed on June 7, 1901, and Hardy when arrested on Unimak Island had in his possession some $685. He based his application solely upon his own affidavit (R., p. 2), in which he swore that McIntosh, the captain, and Johnson, the mate of the schooner *Arago*, a fishing vessel in which he came, as a common fisherman, from San Francisco to Unimak Island, would swear that he had left the schooner at

Cape Lapin on June 11, 1901, four days after the murders were committed.

To account for the money in his possession, he swore that he was mustered out of the United States Army at San Francisco about March 28, 1901, and that one Major Whitney, a paymaster, paid him on that day $1,875. He also swore that there were two men whose names were unknown to him, but who were on the Government boat *Pathfinder* somewhere in the Bering Sea, who would testify that they knew him in San Francisco, in March or April, and saw him have over $1,500 in money in his possession.

Hardy wanted a continuance to secure the attendance of these alleged material witnesses.

In opposition, the Government presented the affidavits of nine witnesses (R., pp. 5 to 14), establishing,

First, that Hardy was not an honorably discharged officer of the United States Army, who, on March 28, had been paid $1,875, but that he was a private soldier who had been convicted of theft, dishonorably discharged from the Army, and imprisoned in Alcatraz prison, San Francisco, up to some time in March, 1901.

Second, that instead of leaving the schooner *Arago* on the 11th of June, his conduct and statements showed he had deserted two or three days after one George Aston left the schooner, which was on June 2.

Charles Schoemer (R., p. 10) testified that he was a soldier in the Philippines, and while at Iloilo became acquainted with Hardy, who was then a private soldier. Martin Tricker (R., p. 8), Frank W. Lee (R., p. 9), and William C. Bowen (R., p. 9) all testified that they had

been confined for military offenses at Alcatraz prison, San Francisco, and there became acquainted with Hardy, who was serving a sentence of imprisonment and was known as "Diamond Dick;" that Hardy was released some time in March, 1901.

The testimony of these four witnesses, who, unfortunately for Hardy, happened to be employed on the U. S. S. *Manning*, within reach, showed conclusively that Hardy was committing perjury in swearing that he had been discharged on March 28, had been paid $1,875 by Major Whitney, and that the two men on the *Pathfinder* saw him with $1,500 in his possession.

R. H. WHIPPLE, the United States commissioner, stated that at the preliminary examination on July 30, Hardy made no request for a subpœna for any witness, either for the captain or mate of the schooner *Arago* or any person aboard the Government boat *Pathfinder*, and about that time voluntarily made the following statement (R., p. 6):

> That on or about—I don't know just the exact date—I left the ship the 9th of June. When I reached the shore it was in a distance, I guess, of 10 or 12 miles before I struck the shore. When reaching the shore I saw nobody. Then I went down a distance of about 10 miles farther, where I ran on to three men. I took them to be prospectors or miners. I asked those men if I could get something to eat, and the reply was, "Yes." This was at a place called "The Cove," where a hunter by the name of Charley Rosenberg had a hunting cabin at that place. I went in and ate supper

with these three men, and they asked me who I was and where from. I told them. I stayed with them all that day and that evening, until 2 o'clock next morning. That evening I asked these parties who they were. One of them that seemed to be the boss told me that they had blowed away from a fishing schooner called *The Dove*, and he said his other chums were also off the same vessel.

They had two dories; one blue finished, I believe, not right; the other, a kind of dirty-black color, as far as I can explain. I did not particularly notice.

That morning, about 2 o'clock, I left the cabin where the three parties were; don't know their last names. The oldest one, that seemed to be the boss, was named "Jack;" could not say if a by-name. The other was Jim; never heard name of third person. He was a young fellow. *That morning at 2 o'clock, when I went to leave, I took with me a bag which I supposed belonged to these fellows, and the bag had in it the stuff. It had in it two gold watches and some razors, knives* (don't know now how many), *and some other little trinkets*, and there was by the table where one was sleeping—he had a Winchester and a forty-four revolver, and the oldest fellow had a gun; don't know the kind, and a revolver, and the other had a revolver; don't know the caliber of it. I took with myself when I left the two revolvers and the bag, and these fellows had provisions, blankets, and clothes. One sailor's clothes bag, and they also had a canvas tarpaulin, with something inside wrapped up in a bag.

Those three parties were seen, and stopped at Charley Peterson's, and also left some clothes at Charley Peterson's, as I understood. Charley Peterson is a hunter, and lives close to Marshova; and these people told me that evening, on my asking them how they got away from the ship with all that plunder, one laughed and looked at the other and said, "Ha, you ain't onto the racket—we made a catch." That is all on that subject. I never asked them more.

This is all I care to state.

That subsequently, on August 6, Hardy made another and different statement, as follows (R., p. 7):

That I left the ship *Arago* about the 9th day of June, 1901, with a man by the name of Laurie, Mate Johnson, Mate Clark, and other sailors—some twelve or thirteen men in all—for the purpose of obtaining water.

That at that time there was a tent standing on the black sand of the beach near the mouth of the creek.

That I and Mate Clark went after a fox.

That he (Hardy) made a complaint that he had lost a glove and went back to look for it and did not return.

That this was a pretext made by him for the purpose of getting away from the mate of the boat.

That he traveled northward until he came to Charley Rosenberg's hunting cabin; that he found in said cabin at said time four men, including one George Aston; that he had a talk with Aston; that Aston told him that these four men had robbed some man further down

the shore and then had killed them; that he (Aston) then showed him (Hardy) a watch that bore the inscription "Julia to Florence," or "Florence to Julia."

That these men and Aston had a talk in the cabin in the hearing of Hardy, to the effect that if he, Hardy, was not all right they would plant him;

That Aston told him the next morning that there had been a murder committed on the island, and that "we had better get out;"

That he stopped at said cabin with these parties that night, and on the following day he and Aston entered into an agreement whereby they agreed to steal the property in the possession of these parties that night;

That pursuant thereto he and Aston, about 2 o'clock on the following morning, got up, and while the other men were sleeping stole the rifle, revolvers, watches, and the other things found in his possession when he was arrested, and that he then proceeded to Scott's camp.

J. C. Scott testified (R., p. 11) that on June 7, 1901, with a party of seven prospectors, he was located at Otter Cove, on Unimak Island. On that day one George Aston arrived at the camp, saying that he was a fisherman from the schooner *Arago* and owing to a storm had been blown ashore. Aston remained with the party from the 7th to the 20th of June. On the night of June 17 Fred Hardy came to the camp, carrying a 30–30 Marlin rifle and revolvers.

That the said Hardy told us that he was a fisherman from the fishing schooner *Arago*, and

that some time prior to the 17th day of June, 1901, he, with a person by the name of "Charley" had come ashore for the purpose of hunting for bear; that the captain of the *Arago* had given him a rifle; that he and his companion, "Charley," had gone back into the mountains in search of bear, and when they returned they found that the dory had returned to the schooner; that they then began to make a search for quarters to spend the night when they ran across a cabin that had a sign on it "Sailors' Home" and also a notice to the effect that the within cabin contained goods and provisions, the property of the *Arago* people, and that any wrecked or lost sailors were privileged to enter and take what provisions they needed.

That he, Hardy, and his companion entered the cabin and found upon the bed the skeleton of a man; that said skeleton bore evidence of the flesh having been gnawed off by rats;

That he and his companion took the skeleton and buried it, and went back to the cabin, cooked a meal, and laid some blankets which they found in the cabin on the floor for a bed, preparatory to staying for the night;

That he and his companion laid down on said blankets for sleep, and that during the night his partner got up and left the cabin, and that was the last he ever saw of him;

That this cabin contained provisions and clothing, blankets, and ammunition;

That the said Hardy showed him a roll of greenbacks, stating that he had $1,200; that it was money that he had received when he was

mustered out of the military service of the United States;

That he, Hardy, had been a lieutenant in the United States Army;

That Hardy remained with us on the night of the 19th, and on the following day, accompanied by George Aston, left our camp for the purpose of going to the place where he said these goods were.

CECIL W. NEWTON stated that he was a member of Scott's party, and that the day after Hardy's arrival at the camp he was present when Hardy stated, among other things, that *he left the schooner Arago on the day following the day that George Aston left.* (R., p. 13.)

J. C. SCOTT followed with a second affidavit stating that he was present at the conversation on the 18th of June, when Hardy stated that *he left the fishing schooner the day following the day that Aston left.* (R., p. 13.)

GEORGE H. ASTON (R., p. 14) testified that about the middle of April, 1901, he left San Francisco on the fishing schooner *Arago* for Bering waters. Fred Hardy was on the boat as a fisherman. On the 2d of June he (Aston) left the *Arago* for the purpose of fishing, but a storm coming up, was unable to return to the boat and was at sea during the night of June 2 and until the afternoon of June 3, when he reached the shore of Unimak Island. He remained with a native on June 3 and 4, and with one Rosenberg on June 5 and 6. On June 7 he joined Scott's party and remained with it until the 20th. On the 20th he returned from Lazareef, where he had gone with Collinwood, one of

Scott's party, and found Fred Hardy at the camp. He had a conversation with Hardy that night, and asked him when he left the *Arago*, and he said, "*Three or four days after you did.*"

Hardy stated to Aston that he had come ashore with a watering party and that he and a fisherman by the name of Charley had gone back into the mountains for the purpose of hunting for bear; that they returned to the boat when he, Hardy, made a pretext that he had lost his glove and went to search for it; that when he returned the boat was gone. Hardy then told Aston that the story he had told Scott about finding the goods in the cabin and about finding the remains of a man was not true; that he had found the goods in a tent. At this time Hardy showed Aston a roll of paper money which he said amounted to $1,200 and made the remark "*You know this is more money than I had when I was aboard the Arago.*" Hardy told Aston that he did not want a man by the name of Smedley, who was the cook for the Scott party, to accompany him to where the goods were, because he had told Smedley and others that the goods were in a cabin, and as they were not in a cabin but a tent, it might create some suspicion; so he urged Aston to go to Scott and ask him not to allow Smedley to accompany them to the place where the goods were. Hardy told Aston that they would go to where the goods were, and get a sufficient amount of clothing and provisions to enable them to get off the island and go to some place in civilization, where they would open up a saloon.

Aston states he agreed to go with Hardy, and on June 20 they left Scott's camp for the place where Hardy said the goods were. Three or four miles from Scott's camp, while in their dory, Hardy pulled from his pocket three gold watches, one of them bearing the inscription "From Florance to Julia," or "From Julia to Florance." Aston asked Hardy where he had got his watches, and Hardy told him "*not to be particular and not to ask too many questions.*" (R., p. 15.) He also told Aston that the rifle he had with him was given him by the captain of the *Arago* when he came ashore.

Aston states that Hardy subsequently told him a different story, to the effect that when the party arrived upon the beach to get water that they saw a tent standing upon the beach near a small creek; that while they were still quite a little distance from the shore they heard the reports of guns and saw three men rush out of the tent and go in different directions. That when they arrived at the tent they found everything in a disordered condition. That the .44 colt revolver he had with him he found immediately in front of the tent. That there was some whisky there and that he and the mate drank some of it. That they found fresh bread and that there was in the tent plenty of provisions, blankets, clothing, ammunition, and reloading tools. That he and the mate went to hunt foxes and that he left the mate on the pretext that he had lost his glove. That when he returned the boat was gone. That he stayed in this tent three

or four days, afterwards removed the goods three or four miles to the eastward and remained there three or four days, and then proceeded to Scott's camp.

The court will observe that the story of these witnesses is utterly inconsistent with the truth of Hardy's statement that he had left the *Arago* on the 11th of June and that the captain and mate of the schooner would testify to that fact. Four witnesses testify that he told them he had left two or three days after Aston, and Aston left on the 2d. The different stories he told about how he came into possession of the rifle and revolvers and watches and money show he was utterly unworthy of belief.

The court properly overruled his motion for a continuance. In doing so it acted within its discretion. If anything were needed to confirm the correctness of Judge Wickersham's ruling, it is furnished by the fact that although there has been ample time since the trial to support Hardy's statements as to what the desired witnesses would testify, by affidavits from the persons themselves, and thus present newly discovered evidence as a ground for a new trial, not one line has been furnished. On the other hand, if it were proper, I might state the result of the Government's investigation. We have interviewed the captain and mate of the schooner *Arago*, and we have the entire army record of Hardy, so we know there was and is no witness who will testify to anything set forth in Hardy's affidavit for a continuance.

THE FACTS.

The murder in this case took place on Unimak Island, one of the Aleutian chain, on the Bering Sea side. The crime was dramatic in many features. Hardy had been a private soldier in the Philippines. There he was convicted of larceny and sent to Alcatraz prison. He served his time and was discharged on the 26th of March, 1901. After loafing about San Francisco awhile, he shipped on the fishing schooner *Arago* bound for the Bering Sea. Early in June the schooner was off Unimak Island. On the 2d or 3d of June, Aston, fishing in a dory, was caught by bad weather, spent the night in his dory and the next day had to take to the shore. About three days later, Hardy deserted the ship and sought the shore. He reached the beach a disgraced soldier, trained in the use of the rifle; a discharged convict, prepared to prey on society; a dangerous man. Fatal arrival for four peaceful prospectors then on the shore!

I begin with the testimony of OWEN JACKSON (R., p. 63), the sole survivor of a party of four prospectors who left Seattle for Alaska in a fishing boat, *The Lizzie Colby*, about the 16th of April. This party was made up of Jackson, the two Sullivans (Con and Florence), and P. J. Rooney. All these were men of mature years—Jackson 50, Con Sullivan about 50, Florence Sullivan about 40, and Rooney about 40. They took with them to Unimak Island a cargo of provisions, clothing, bedding, guns, and mining tools, about 2,500 or 2,600 pounds in all. They had a rifle—a 30.30 Marlin smokeless, a shotgun, and two Colt revolvers, with

plenty of ammunition. About the 16th of May they reached Cape Lapin, on Unimak Island, pitched their tents, and began prospecting. They stayed there ten or twelve days. Then they went about 20 miles northeast up the Bering Sea, taking their outfit with them. There they pitched their tent and remained ten or twelve days. Not finding anything, they made up their minds to go back to Cape Lapin. So they took about half of the provisions and on the 6th of June came back. Three clothing sacks and three hand satchels contained the portion of the outfit which they brought back with them. *The rifle, shotgun, and revolvers were in this boat load.* In Jackson's satchel was a pin which figures in the testimony. Con Sullivan had a watch which he had on that day, and Florence Sullivan another watch, and Rooney another. These three watches figure in the case. They reached Cape Lapin about 11 o'clock and came ashore and unloaded, *put up their tent and put the goods in it*, had lunch, and started back for the balance of the stuff. They had expected to come back that night but the surf was bad. They had to carry their stuff about half a mile farther to get it on the boat, so they stayed over the night and the next morning started down for Cape Lapin. They got back the morning of the 7th. What occurred then is thus described by Jackson (R., p. 77):

> Next morning we started down for Cape Lapin. We got there about 11 or half-past 11 o'clock. When we were coming in, Rooney hollered, "There is two men going up the creek with packs." I looked around and only saw

one man; my back was to them. I was rowing. I only saw one man. Con was in the bow of the boat and hollered, "Pull in quick. The tent is down and everything gone." We pulled in quick, and found that there wasn't a thing left there. The tent was lying down, and we could see nothing. Three of us started up the creek in the direction we saw the men going.

I took across in this direction [indicating on the map], and Florence went to the cabin, and Con and I went on down this way, and he followed him. I wanted to go down here to see whether I could see a dory. I could see nothing.

Q. How long did you search there?

A. About half an hour. Me and Con came back, and we met Florence at the cabin; I should judge about here [indicating on the map] We had a talk among ourselves, and Florence said this little grip of theirs had valuable papers in it. I said, "Had you any money in it?" They said, "No." It was a great loss to them and was gone. (R., p. 78.)

* * * * *

We went quite a little ways up the creek. The next place we saw him (Florence Sullivan) was on this little island. Con says, "There's Florence." I looked around and saw him, and about a quarter of a minute after that the shooting commenced. (R., p. 87.)

We were on the other side of the creek, about 225 or 230 yards from where Florence was. Four shots went off and a man stood up from behind a rock. His back was to us and he saw

us and went on toward where we saw Florence, but he was gone. We did not know who would be shot next. We went down to the creek as fast as we could. When we got near the boat Rooney hollered, "Come on boys, let us get out to sea." He then started hollering about poor Florence. Then we ran to the boat and had hardly got our hands on it when a shot came and took Rooney in the leg somewhere. I said, "Drop behind the boat." They were firing into the boat.

Q. Did Rooney say anything at that time?

A. He hollered, "Oh, I am shot." We lay down behind the boat, and Con said, "We will have to make a break; we will be killed." I said, "We will have to do it quick." I had no more than said this when a bullet struck the boat. We got up, and both went toward the bluff. We had not gone more than 15 or 20 yards when Con got shot between the shoulders. He threw up his hands and hollered: "Oh, Lord! Oh, Lord!" as loud as he could. I went on, and the next shot I got it in the leg. I looked around and saw Con lying on the beach. Then I got around this point; the bullets were flying after me and I could hear them as they were hitting rocks behind me. I went as far as I could until the ocean cut me off. The sea comes in and I could go no farther. I stayed there until I saw Rooney coming around this point. I pulled out my handkerchief and waved to him to come to me. He kept coming on until he came to this little place where he lay down and

remained; he lay down and beckoned for me to come to him. I went over to him and he stayed on the outside and he wanted me to come in. He said "Owen, come in and lay down here." I says, "Pat, for God's sake pick up courage and let's try to get out of here." He said, "There is no use; we are going to be all killed." He says, "He is over there now searching Con's pockets." Then I begged him again for God's sake to pick up courage and come, but he shook his head. Then I made a break and started climbing the cliff. I climbed up this cliff and managed to get up it. There is a flat bench there and I stayed there until after Rooney was killed. I must have stayed in the top about twenty minutes, or probably about half an hour, when I heard two shots go off in quick succession again; it sounded so close it seemed to be right down under me where the shots were. When the second shots were fired I took off my gum boots and started off. I kept going day and night. I traveled all that evening, and the next day I struck a cabin about 11 o'clock the next night. The next morning when I was ready to start I saw four natives coming up; they were scattered; one was about a quarter of a mile across the river. I went in and bolted the door, and before long a couple came up and went to the cabin; one of them tried to open the door and found that the door was fast.

Jackson, supposing that these natives wanted to kill him, stood them off for twelve hours, writing in the meantime on a board behind the stove, the following:

WASHINGTON, SEATTLE.

OWEN JACKSON: The Indians killed Con Sullivan, Florence Sullivan, and Pat Rooney at Cape Lapin on June 5. I escaped. They have surrounded here.

OWEN JACKSON.

I wish you was here; you might help me. They took our things and then slaughtered us. We was prospectors.

He remained at the cabin three days. Then he went on toward False Pass and wandered about until the 24th of June, when he was picked up at Scott's camp. He testifies (R., p. 91) that he saw Con Sullivan with money at Seattle buying clothing and underwear, and saw Florence with money there. He did not see either have any money at Cape Lapin. There was no opportunity to spend money there. But he says he saw Con Sullivan sewing up a pocket he had in a vest and saw Florence Sullivan with a money belt when he stripped. The watches which Hardy had in his possession when he arrived at Scott's camp after the murder were all identified by Jackson, as well as the pin which was found on Hardy's person when he was arrested.

J. C. SCOTT, the head of Scott's camp, testified that George Aston arrived at his camp on the 7th of June, between 11 and 12 o'clock, and remained with the party until the 20th. Fred Hardy reached the camp on the

17th of June, between 9 and 10 o'clock at night. The next morning Hardy told him that he got off of the schooner *Arago* one day after Mr. Aston got off (R., p. 103). Hardy had with him two revolvers and a rifle of the description of those belonging to the Jackson party. The story Hardy told was set out in Scott's affidavit on the motion for a continuance (R., bottom p. 104). Aston was not at the camp when Hardy arrived, being at Cape Lazaress with Collinwood. Hardy asked Scott whether there was any money in the camp. He wanted to trade his money for gold. He took out his pocketbook and showed the money. He said he had about $1,200 (R., p. 105). Scott saw one of the watches that Hardy had and identified it (R., p. 107). He also said it looked as if he had watches in his upper vest pockets. On the 20th of June Hardy left with Aston to go to where he said the goods were.

Cecil Newton, a member of Scott's party, testified that Aston arrived at the camp on June 7, in a dory, with nothing but the clothes he had on. Hardy reached the camp June 17, stating he had been out five days and was hungry. Food was given him, but he did not eat very much—not like a hungry man. (R., p. 119.) Hardy told Newton substantially the same story about his coming ashore and being left, and finding a cabin with a dead man in it. (R., p. 120.) He said the Marlin rifle belonged to the captain, and the six-shooters he had aboard the ship. (R., p. 122.) Newton heard Hardy tell Aston that he had seen him go to nor'ward when he left, and wanted to go and

help him, but the captain would not let him, as he would run away. He did not go, and the next day he left the ship.

L. HANSON, a member of Scott's party, testified to Hardy's arrival and gave Hardy's story as follows (R., p. 128):

> He told us that him and the captain, and another man named Nelson, went ashore to hunt, and he said that the captain offered him $50 to get a bear. When he got ashore he went out to the hills and was late in getting back, and the captain had pulled out and left him. He said they lit a big fire and waited for a boat to come after them, but it did not come. He said that there was a cabin there, and it commenced to rain. It was locked; so he broke the door open and went in. When they got in there was a dead man's bones lying in a bunk; the meat was all eaten off. I said: How could anything get in it if the door was locked? He said there was a hole in the floor where the rats and foxes could get in. He said that he took and buried it, and he said that he went to bed and did not sleep much. He said his partner, Nelson, went out in the night and left him alone; so he left and came down to our camp. He said he was five days out and had nothing to eat. I believe the cook gave him something to eat when he got there that evening.

Hardy further stated that there was lots of stuff left in the cabin, provisions, blankets, and tobacco, and a double-barrel shotgun (R., p. 129).

G. H. COLLINWOOD, a member of Scott's party, testified to Hardy's arrival, and gave his story as follows (R., p. 140):

> He said that he came off the *Arago*, and that him and the captain came off of the *Arago* and went out hunting. They went up looking for bear and the captain had stayed behind, and that they went up and got back and the boat had gone and left them, so they stayed for the night; they found a cabin there.
>
> Q. Who stayed?
>
> A. Him and his partner.
>
> Q. Did he say what his name was?
>
> A. No, sir. He said that they found the cabin and broke it in and that a man was dead in the cabin, and they took him out and buried him. I said, "*Why did you bury that man without reporting it to the authorities?*" *and he did not answer the question.*
>
> Q. What did he say in reference to where he got the rifle?
>
> A. He did not say anything in reference to where he got the rifle, but he said that there was lots of things there. Plenty of grub and provisions, and he had found a fine shotgun which he had hid under the floor.

The testimony of GEORGE ASTON, who was a shipmate with Hardy on the *Arago*, and was with Hardy after he left Scott's party until he was arrested, occupies some 70 pages of the record (pp. 146 to 215). Aston was a seafaring man. He first saw Hardy in San Francisco, on the dock, a day or two before the *Arago* was towed into the stream. Thirty-six days

were consumed in the passage from San Francisco. On the 2d of June, Aston was caught out in a dory, fishing. Unable to get back to the vessel, he spent the night at sea, and the next day landed on Unimak Island. He spent the 3d and 4th with some natives in camp, the 5th and 6th in Charles Rosenberg's schooner. On the 7th he met the Scott party, with whom he remained until the 20th. On returning to Scott's camp on June 19, after a temporary absence, he found Hardy there. The following covers the conversations he had with Hardy at this time (R., p. 149):

> I asked Hardy concerning parties aboard the schooner *Arago* and made remarks upon how the fishermen were getting along; what success they had, and how the boys were feeling. I also asked Fred Hardy concerning the story I had heard in camp when I returned. Hardy told me that he had—I believe, to the best of my recollection, that he first told me that he found the articles of which he had spoken, and of which I heard he had spoken. He found them in a cabin, and he stated to me that they were not in a cabin, that they were in a tent. He also stated to me that he had asked the cook of the Scott party to accompany him to where they were. He also stated that he did not want the cook to go. He also asked me to accompany him to a point on Bering Sea.
>
> Q. Did he give any reason why he did not want the cook to go?
>
> A. Yes, sir; that he had found these articles in a tent and not in a cabin.
>
> Q. What else did he state there?

A. That he had money enough to help me and himself; that he wished me to accompany him to this point on Bering Sea and obtain possession of these goods; and he also asked me during the conversation to request Mr. Scott not to allow Smedley, the cook, to accompany us; he also stated that he did not; *that he wanted to get into civilization; he was tired of the life he had been leading*—possibly not in these exact words; he also displayed to me some money in a wallet, also some in a small buch bag; some of the money was in bills—at that time I could not discern the denomination; there was some silver in a small purse, the amount I did not note at that time.

Q. Did he state anything as to the amount of money that he had?

A. Yes, sir.

Q. What did he say?

A. He said he had $1,200; he also stated that, "*You know I did not have that money aboard the schooner; that I must have got it somewhere.*"

Q. What did he propose to do with this money, if anything?

A. *To get into civilization and start a saloon.*

Q. Did he say anything about taking you in with him?

A. Yes, sir.

Q. What did he say?

A. He asked me to go with him as partner—the exact words I can not get.

In accordance with Hardy's proposition, he and Aston left the Scott camp for the place where Hardy said he had found the goods. On the dory Hardy

gave Aston a Colt's six-shooter (R., p. 153), displayed three watches which he had (R., p. 153), counted his money ($694) (R., p. 154), and gave one of the watches to Aston (R., p. 154). Hardy piloted Aston back to where the goods were (R., pp. 155, 156, 157), showing in his conduct and conversation the consciousness of guilt. Finally they came to where the goods were (R., p. 158):

> We went on to the westward then, and came to a trail; we followed the trail across a ravine up onto another hill; *there was a little knoll there, which Fred said was his fort; he had stood guard there.*
>
> Q. Can you indicate where that knoll is on the map?
>
> A. It would be about along here; the ravine that I spoke of is about here. We went right close to the edge of the land, and Hardy told me he would show me a place from where we were looking down; he said that was his camp; he also asked me if I thought I could get down there; he also said that unless a person knew how to get down he would have a job finding out; he piloted me down all right; he had to go a little to the westward and down a rather steep bluff; there were a lot of rocks—a gravel beach; the land is formed into little bights there. Fred told me also that he was unable to get into the place where he had these goods placed, unless at low tide, without climbing over the rocks.

The cache is described on the next page (R., p. 159):

> There was in there a fixture formed of canvas and pieces of round wood. They were

> stayed with pieces of cod line of heavier quality than we used for fishing in the dories, and I believe there were four or six round uprights and around them, in the shape of a wall, was a piece of canvas. The thing was about 4 or 5 feet in height—about 4 feet in height, I should say. It was covered over the top with a piece of canvas and a rubber blanket. There was some cooking utensils hanging up on a nail on one of these boards; there was also a square tin, like a coal-oil can, and there was some boxes, and I believe there was some cups and knives and forks in it. There was some provisions in this place, but inside this shack there was some boards laid down on cross pieces under them. One end of the cross pieces rested on the ground or stones. There was some little pieces of boards laid down on top of these cross pieces and on top of them there was some bedding.

Packed in this place were the goods of the murdered men, which Aston identified (R., pp. 159 to 167), including a double-barreled shotgun (R., p. 167).

Hardy's story of how he came into possession of these goods appears on the next page (R., p. 168):

> He told me that he had found the goods that I saw in the cache some 3 or 4 miles to the westward of where the cache was, and that he had found the articles in a tent. If I remember rightly, he stated to me that the tent was pitched below the high-water line. I do not distinctly remember, but I believe that as far as my memory serves me, he also stated that he had placed some of the goods that were in this tent in a

dory, and that he had pulled the dory up as far as he could to the eastward, and that he had anchored the dory, had lost the anchor, and the dory came in contact with the rocks and got stove in. Whether it was the side or not, I could not be positive. He landed these goods that he had in the dory at this point designated as a cache that he had found immediately after landing there. He had smashed the dory up with an ax.

Another of Hardy's stories about how he came ashore appears on page 169. It is unnecessary to reprint it.

Hardy admitted that he had destroyed the valises and papers that were with the goods (R., pp. 170, 171), and stated that he had remained near the cache three or four days; "*that he had laid up behind a little knoll that was almost directly above the cache; that he had kept guard*" (R., p. 171).

What for, unless he was lying in wait for Jackson's return in order to wipe him out, too?

After they had spent one night at the cache, Aston left Hardy and went 4 or 5 miles to where he had left the dory. On his return he met Hardy (R., p. 172):

> Hardy had a rifle, and told me that he had about 60 rounds of ammunition; I do not distinctly remember whether we divided the ammunition; that part of the ammunition was rifle ammunition and part six-shooter ammunition.
>
> Q. What else was said?
>
> A. *I asked him what he was loading himself down for like a walking arsenal. He told me that*

he would not only have some goods but he would also have a schooner.

After staying at the cache some days Aston and Hardy left, taking with them the shotgun, some flour, bacon, and other articles (R., p. 174). They first stopped at the cabin of Charley Rosenberg, where Hardy got Aston to call him "Joe Cox." He didn't want Rosenberg to know who he was. Hardy tried to get Rosenberg to take them off the island (R., p. 176). The rifle and the shotgun were carefully wrapped up and secreted on the outside of this cabin (R., p. 179), where they were found afterwards by the officers (R., p. 180).

Apparently Hardy weakened about leaving the island with Rosenberg and Aston (R., p. 177). So, after staying a day or so with Rosenberg, the two left and proceeded on toward False Pass. Then they saw a schooner coming out of Marzovio and tried to flag her, but failed (R., p. 183). The next day they went to a fishing station belonging to the Alaska Cod-Fishing Company, where they obtained employment (R., p. 184), and remained until arrested by officers from the U. S. S. *Manning* (R., p. 186).

CHARLES ROSENBERG describes the visit of Hardy and Aston to his cabin (R., p. 217), and J. O'Sullivan gives an interesting account of the arrest of Hardy and his attempt to make away with one of the watches and the pin (R., p. 222). Five hundred and eighty-five dollars was found on Hardy's person (R., p. 227).

O'Sullivan was with the party and visited the scene of the murder. He says (R., p. 228):

> We got the bones of Rooney and buried them; and we dug up the bones supposed to be the bones of the Sullivan boys, and dug the grave deeper and buried them all together—the remains of the three; and then we went around searching for evidence. We got to the cabin there, and the cabin was broken down. It seemed to have been recently broken down.
>
> Q. Examine this map of that country and state whether or not it correctly gives the position of the coast along there—of the creek and of the Barabara.
>
> A. Well, I came up the creek there, and I—somewhere along here—I crossed the creek and came over and looked around. I was monkeying around somewhere in here. Then I struck on down and crossed the creek and went over this way and seen a barabara. It was right here. The door of the barabara was facing the bay here, and the roof was broken in. It looked like it had not been broken in long. I looked in and seen a three-quarter mattress there, apparently new. It was covered with dirt, and I pulled it up and did not find anything. I left the barabara and crossed the creek, a very small one. I came across like this, and there is a little knoll here. I went up there like this, and came on to the point of the hill overlooking the bay. This side is the opposite of the hill facing the bay. This is all sand-like. We came up here, I think, Lincoln Wahn, George King, and myself.

Q. What, if anything, did you find there?

A. *We found seven empty cartridges on the brow of the hill, in a very small space.*

Q. Within a radius of what space did you find these cartridges?

A. Well, within a radius of about not quite as large as this platform.

Q. You say that where you found these cartridges was right on the brow of the hill overlooking the creek?

A. *Overlooking the bay and overlooking everything. The most prominent point on the hill. It commanded the beach both ways.*

R. H. WHIPPLE, United States commissioner, gives an account of the visit to the scene of the murders, the burial of the bodies (R., p. 237), and the finding of the cartridges (R., p. 238); Hardy's sworn statement (R., p. 243), and his second statement (R., p. 245).

These were substantially all the witnesses for the Government.

The only witness for the defense was Hardy. His story appears in the record, pages 254 to 330. I shall not attempt to epitomize it. I trust the court will read it. It is enough in itself to convict Hardy, being packed with

"Lies, gross as a mountain, open, palpable."

Naturally, an attempt is made to drag Aston in, but it is a pitiable effort, calculated to deceive no one.

In rebuttal, William C. Bowen, Martin Tricker, Frank W. Lee, and Charles Schoemer, who happened to be employed on the U. S. S. *Manning*, then fortunately at Unalaska, and who had formerly been soldiers,

all testified that they had known Hardy, that he was a private soldier, and three of them identified him as a prisoner known as "Diamond Dick," who was confined at the military prison at Alcatraz at the time they were there, and who was discharged from that prison about the last of March.

Collinwood, Scott, Aston, Newton, Hanson, and Nosiakof all gave testimony respecting Aston's whereabouts covering the time between the 3d of June and the 19th of June (the day Hardy arrived at Scott's camp), showing the utter falsity of Hardy's story that he had met Aston and three men at Rosenberg's cabin upon landing from the *Arago* about the 10th of June. (R., p. 263.)

ASSIGNMENTS OF ERROR.

1. *That the court erred in overruling a motion for a continuance.* I have already discussed this assignment.

2. *The court erred in permitting one Kehoe to be excused for cause upon the application of the Government* (R., p. 28).

Kehoe stated first that he had formed an opinion with respect to the guilt or innocence of the accused. For this he was challenged for cause by the defense. In view of the fact, however, that he stated he could disregard the opinion and try the case upon the law and the evidence, the challenge of the defense was overruled. Afterwards it came out that he had conscientious scruples with respect to rendering a verdict where the penalty is death, on circumstantial evidence. For this reason he was challenged by the Government and the challenge sustained.

He would not have made a proper juror under the circumstances.

3. *The court erred in not excusing one L. D. McLean as a juror for cause upon the application of the defendant.* (R., p. 32.)

McLean, who resided in Nome, stated that he had read what purported to be an account of the murder in the papers at Nome, and formed an opinion which it would require evidence to remove. For this he was challenged by the defense. The challenge was denied, because he stated he had not discussed the case with any person who claimed to be acquainted with the facts, did not know whether the newspaper statement purported to be the facts or not, and, if sworn and accepted as a juror, believed he could disregard the slight opinion he had and try the defendant fairly and impartially upon the law and the evidence.

4, 5, 6. These assignments are based upon the court permitting the Government to ask certain jurors (Hayden, R., p. 47; Johnson, R., pp. 48, 49) the following question: "*Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty where the penalty prescribed by law is death, upon what is known as circumstantial evidence?*"

Obviously, it is ground of challenge for cause if a juror states that he has conscientious scruples against rendering a verdict in a capital case upon circumstantial evidence, and therefore a question which is intended to elicit the condition of the juror's mind upon this point is entirely competent.

7, 8. *The court erred in permitting the witness Jackson to answer the following question: "Mr. Jackson, you wrote on there 'June 5.' Why was that?"* (R., p. 89.)

Jackson had testified that the murders took place on June 7. After escaping, he had traveled all night and all the next day, and the next night about 11 o'clock he reached a deserted cabin. There he spent the night. The next morning he saw four natives approaching. He locked himself in. One of the natives tried to open the door. He kept them out in the belief they intended to murder him. Under these circumstances and expecting death he wrote the following statement:

> WASHINGTON, SEATTLE.
>
> OWEN JACKSON: The Indians killed Con Sullivan, Florence Sullivan, and Pat Rooney, at Cape Lapin on June 5. I escaped. They have surrounded here.
>
> OWEN JACKSON.
>
> I wish you was here; you might help me. They took our things and then slaughtered us. We was prospectors. [R., p. 89.]

The question was put to elicit Jackson's state of mind and thus explain how he came to write "June 5" instead of "June 7." The answer is at top of page 90: "I was shaking all over. I was doing my best to make a mark down. I did not know but what I would be killed any minute."

9. The court erred in permitting the witness Jackson to answer the following question: "*What was the condition of your hands and feet when you got on the top of the bluff there?*"

Jackson had been describing his escape from the fate of his comrades by climbing a steep cliff, stopping on a bench halfway up and removing his rubber boots. The condition of his hands and feet when he got to the top of the cliff was material because it threw light upon the transaction. It indicated more plainly than any description he could give the difficulties of the ascent of the cliff and the frightful struggle he had to save his life. The murderer believed that he had the entire party in a trap, penned between the sea and the cliff, so that he could dispose of all of them. He had selected a commanding point where, with his rifle, he could pick them off one after another. By a mere chance Jackson escaped. He reached the top in his socks; he had to pull off his gum boots halfway up. And as for his hands, he says: "*Most of the flesh was torn off my fingers when I got up.*"

10. The court erred in permitting the witness Jackson to answer the following question: "*How long did you continue to wear your socks?*"

But the court did no such thing. The court sustained the defendant's objection to this question (R., p. 93).

11. The court erred in permitting the witness Newton to answer the following question: "*Might it not be on the 19th day of June?*" (R., p. 126).

On his redirect examination Newton was asked whether he was certain that Aston arrived on the 18th day of June from Lazareff. He answered, "Yes, sir."

Then he was asked, "Might it not be on the 19th of June?" When the objection to this was overruled, he answered, "No; it couldn't have been on the 19th. It wasn't on the 19th."

The question was objected to as leading. Obviously, it was not leading. It was simply intended to test the certainty of the witness's recollection, which was entirely proper. He stood by what he had said (R., p. 126).

12. The court erred in permitting the witness, Aston, to answer the following question: "*Did you ever see him have a watch while he was aboard the 'Arago'?*"

Aston had just been telling about Hardy arriving at Scott's camp with the rifle and revolvers and watches, which were subsequently identified as the property of the murdered men. Hardy had been on the same schooner with Aston for some six weeks. It was of course material to know whether Hardy had had these watches when he was on board the schooner, and so the question was put. Would it not have been material for Hardy to show that some one had seen the watches in his possession while he was on board the schooner? (R., p. 151.)

13. The court erred in permitting the witness Aston to answer the following question: "*You had no time to get any of these things in your dory, did you?*"

While counsel for defendant objected to this question as leading, it is distinctly stated that *there was no ruling*, and consequently no exception, nor any answer that seemed to be germane to the inquiry. The only

answer made was, "The dory which I had was never so far westward as the cache." Aston had been telling how they had put away in the cache preparatory to their leaving the last time the most of the goods, and that he had told Hardy that they ought not to take anything except what they actually needed, for instance, in the way of food. Then came the question objected to, and subsequently the statement that the dory was never so far westward as the cache; that they both tried to get the dory off the beach but gave it up, and left the cache for good (R., p. 174).

14. The court erred in permitting the witness, Aston, to answer the following question: "*How did you expect to carry those provisions from the cache to Scott's camp?*"

Aston had just stated that, along with Hardy, he went to the cache with the dory to get some provisions, blankets, and clothing. Then came the question objected to, "How did you expect to carry these provisions from the cache to Scott's camp?" The question was, perhaps, unnecessary, and the answer inevitable, namely, "In a dory." Really, these questions were simply preliminary. They led up to the next question, "Why did you not use the dory?" That was not objected to, and the answer was, "On account of the water and the weather, and what I considered suspicious circumstances concerning the place and position of the goods, and also on account of the actions of Mr. Hardy, and also on account of Mr. Hardy's own request." (R., p. 213.)

15. *The court erred in permitting the Government to introduce in evidence the statement made by Hardy to Whipple;* and

16. *The court erred in permitting Whipple to testify as to the statement made to him by Hardy while in jail.*

The conditions under which the first statement of Hardy was made are described by Commissioner Whipple. (R., pp. 240 to 243.) The statement was not made under the statute or as a part of the preliminary hearing. It was taken because Hardy insisted upon making it, although Whipple distinctly told him he was entitled to counsel, that he was under no obligation, that he need not make the statement unless he so desired, and that whatever statement he made would be used against him at the trial. (R., p. 240.)

The second statement was made at the jail, after Hardy had been committed. The commissioner had been informed by one of the men at the jail that Hardy wanted to talk with him. He told the person that he could bring Hardy in if he wanted to talk with him. This was done, and Hardy informed him that he desired to talk about the case. Then he went on to say that his former statements were untrue, and he told another story about how he came to leave the *Arago* and what happened afterwards. (R., p. 245.) Obviously it was perfectly proper to allow this statement to go in. The statement was entirely voluntary.

18. *The court erred in permitting the witness Whipple and other witnesses to testify on behalf of the Government whose names were not indorsed on the indictment.*

But Whipple's name *was indorsed* on the indictment (R., p. 370), and who the other witnesses referred to are does not appear.

17, 19, 21, 22. These assignments are based upon the action of the court in permitting Martin Tricker (R., p. 336), William C. Bowen (R., p. 332), Frank W. Lee (R., p. 339), and Charles Schoemer (R., p. 341) to testify on rebuttal that they knew Hardy when he was serving his sentence as a private soldier in the military prison at Alcatraz.

I think all these witnesses fortunately happened to be employed on the U. S. S. *Manning*. Their testimony enabled the prosecutor to explode Hardy's story that he had been paid $1,875.75 by Major Whitney on the 28th of March and had been honorably discharged as an officer in the United States Army. If there is any rule that prevents the Government from demonstrating the falsity of a defendant's story by the use of witnesses who were not before the grand jury, and whose names were not on the indictment, because it was not known then that their testimony would be material, I am unacquainted with it. The view the court took of this objection appears on the record, page 333.

20. The court erred in permitting the witness, Bowen, to answer the following question: "*Are you positive that the defendant here is the same person that you saw at Alcatraz?*"

Bowen was introduced as a witness for the purpose of identifying Hardy as a man who was in prison at Alcatraz while Bowen was there, and it was entirely

proper for counsel to place the degree of certainty with which the witness spoke. The witness was positive, and so stated in answer to the question. (R., p. 335.)

23. The court erred in permitting the witness Hanson to answer the following question: "*When did you first see George Aston?*"

Hanson belonged to Scott's party. It was material to show in rebuttal that Hardy's tale about having met Aston with the two men directly after he deserted from the schooner was untrue. If Aston was at Scott's camp on the 7th of June he couldn't have been where Hardy swore he was (R., p. 352).

The nine concluding assignments (24 to 32, inclusive) are general and formal, based on the overruling of the motion for a new trial and the denial of the motion in arrest of judgment, and, in the absence of a brief on the other side, present nothing specific for discussion.

JUDGE WICKERSHAM, who tried the case, and was liberal to Hardy in all of his rulings, on sentencing him, said (R., p. 358):

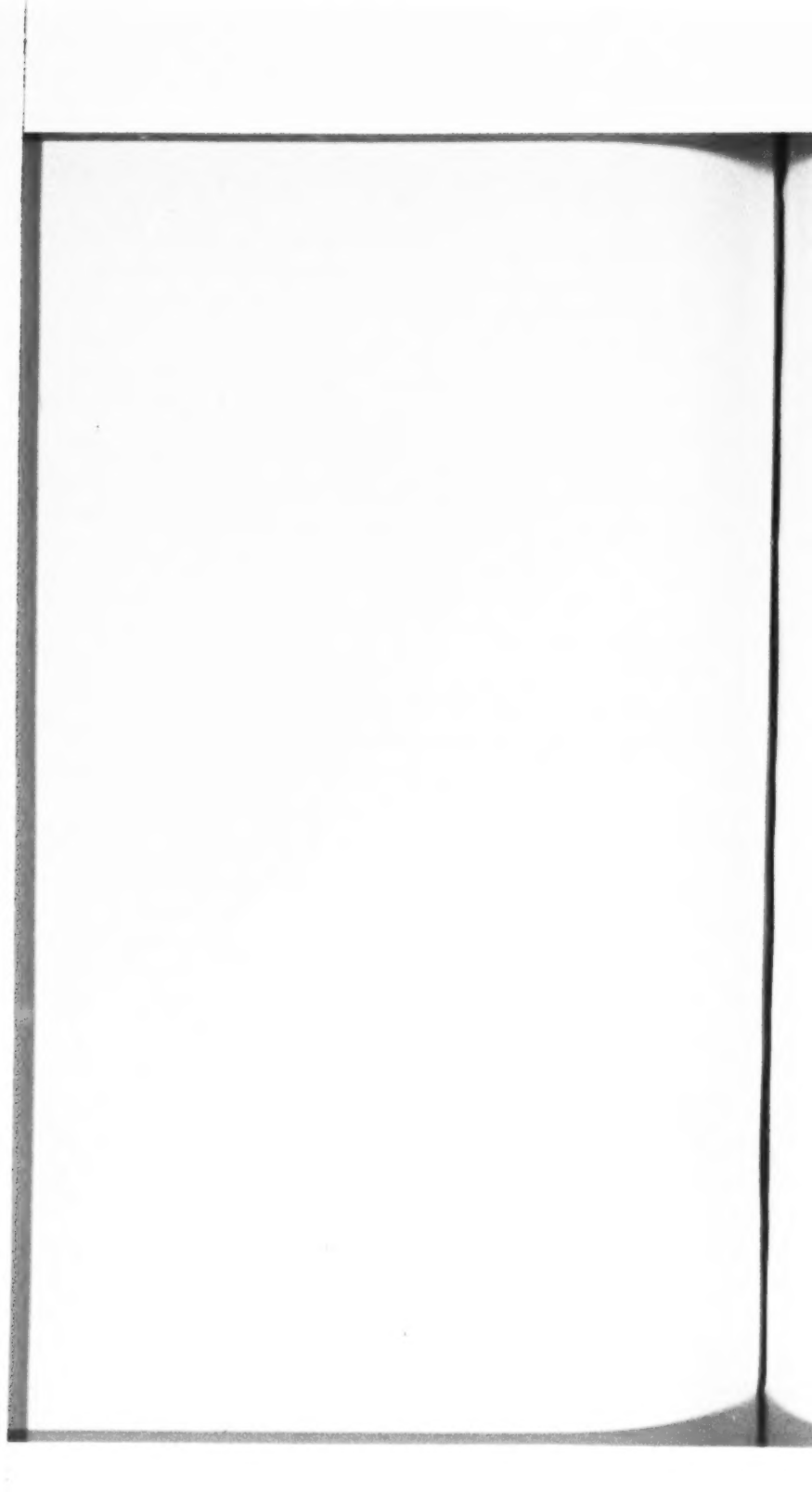
> The court has nothing whatever to do with fixing the punishment, but that you, and the twelve citizens who tried you as jurors, may be satisfied that the court feels as they do in the matter, the court says now, that *after listening to the evidence carefully and patiently, I am satisfied, as a juror ought to be, that you are guilty of murder in the first degree* for the killing of one Con Sullivan at the time and place mentioned in the indictment. The verdict of the jury

agrees with my own judgment, and my conscience would be clear, if I had been a juror, in reaching the same verdict which they reached in your case.

JOHN K. RICHARDS,
Solicitor-General.

APRIL 24, 1902.

O



Supreme Court of the United States.

No. 502.—October Term, 1901.

Fred Hardy, Plaintiff in Error, vs. The United States. } In error to the District Court of the United States for the District of Alaska.

[June 2, 1902.]

Mr. Justice Brewer delivered the opinion of the Court.

On September 10, 1901, in the District Court for the District of Alaska, Second Division, Fred Hardy, plaintiff in error, was found guilty of the crime of murder and sentenced to be hanged. Thereupon he sued out this writ of error.

In the record appear thirty-two assignments of error, but in the brief filed by his counsel only three are pressed upon our attention. First, it is claimed that the court erred in refusing the defendant a continuance. "That the action of the trial court upon an application for a continuance is purely a matter of discretion, and not subject to review by this court, unless it be clearly shown that such discretion has been abused, is settled by too many authorities to be now open to question." (*Isaacs* v. *United States*, 159 U. S. 487, 489, and authorities there cited.) See also *Goldsby* v. *United States*, (160 U. S. 70.)

This proposition of law is not disputed but it is contended that abuse of discretion is shown. The pertinent facts are as follows: The indictment charged the murder of Con Sullivan on June 7, 1901. The killing took place on Unimack Island. The defendant filed in support of his motion his affidavit stating that he had been in custody since July 27; that at the time of his arrest he had $685 upon his person, which was taken from him by the arresting officer; that one Captain Mackintosh, and one John Johnson, captain and mate respectively of the schooner Arago, upon which affiant came as a sailor from San Francisco to Unimack Island, would testify that he remained on that vessel continuously from the time it left San Francisco until June 11; that the schooner, with the captain and mate on board, left Alaska prior to the finding of the indictment against him, but that he believed and had been informed that the vessel would probably return within a reasonable time, and if not that the depositions of the captain and mate could be obtained in San Francisco, the place of their residence. The affidavit further stated that two witnesses, whose names were unknown, who were both in the employ of the government on a boat named the

Pathfinder, plying in the waters of the Northern Pacific Ocean and the Behring Sea, and which frequently called at Dutch Harbor—within one mile of the place where court was being held—would testify that they knew affiant in San Francisco from about March 26 to April 15, and then saw him in possession of a large amount of money, an amount in excess of $1,500, a part of which was the money taken from him when arrested. The affidavit also stated that one Major Whitney, a paymaster of the United States Army, at San Francisco, would testify that on or about March 28 affiant, on his return from the Philippine Islands as a soldier in the United States Army, was mustered out of the service at San Francisco; that said Whitney at that time paid affiant $1,875; that the deposition of said Whitney could be obtained, as he was permanently stationed at San Francisco. By these witnesses defendant sought to show that he was on the schooner at the time the murder was charged to have been committed, and also to explain the possession of the money found on his person. But the date named in an indictment for the commission of the crime of murder is not an essential averment. Proof that the crime was committed days before or days after the date named is no variance. Again, accounting satisfactorily for the money found on his person made no defense. It is not stated in the affidavit that the deceased had money in his possession. There is nothing in the indictment to suggest that he had, and nothing had at that time been disclosed to indicate that the fact that the defendant was in possession of so much money, had any significance in connection with the charge. So that upon this presentation alone it could not be said that an abuse of discretion was clearly shown.

But, further, the government offered the affidavits of several parties, which were received without objection, three of whom testified that they had been soldiers in the United States army, doing service in the Philippine Islands, were convicted of some military offense, and sentenced to imprisonment at Alcatraz Island military prison, San Francisco; that when they arrived at the prison, in the fall of 1900, the defendant Hardy was there as a military prisoner; that he was discharged therefrom the latter part of February or the first of March following, and one of them added that the defendant said that he had been sentenced for a term of five years and a forfeiture of all pay and allowances. Another witness, George Aston, testified that he came with the defendant from San Francisco on the schooner Arago; that affiant left the schooner on June 2, and that on June 20 he met the defendant Hardy, who told him that he had left the schooner three or four days after affiant; also that Hardy showed him a roll of paper money which he said was about $1,200, and added: "You know this is more money than I had when I was on board the Arago." Another witness testified that the defendant told him that he left the schooner the day after the witness Aston. Another, that Hardy

made a statement to him, which was afterward reduced to writing and signed by Hardy, that he left the schooner Arago about June 9, but could not tell the exact date. Some of these witnesses also testified to the defendant's being in possession of a gold watch and other articles, which he did not have when on the Arago, and which were afterward shown to have belonged to the deceased, and also to Hardy's contradictory statements as to how he obtained possession of those articles, statements which in themselves were, to say the least, singular, and tended to create strong doubts as to the truthfulness of his affidavit.

Under these circumstances it seems to us clear that the court did not abuse its discretion in refusing a continuance. It is true the trial was held in a remote part of the nation, and where facilities for securing the attendance of witnesses were not as great as in more thickly settled portions; but it is also true that many of the witnesses for the government were engaged in prospecting, men without settled abodes, and whose attendance at subsequent terms it might have been difficult to secure, and it must have been perfectly obvious to defendant and his counsel that the longer he could postpone the trial the greater the probability of the absence of witnesses against him. It was the right of the court to consider all these matters, and when it appeared clearly from the testimony that some of his statements were false the court might well have concluded that no reliance was to be placed on the others.

The second assignment of error presented by counsel is that the court erred in permitting the district attorney to propound to juror Hayden the following question: "Q. Have you any such conscientious scruples or opinions as would prevent or preclude you from rendering a verdict of guilty, in a case where the penalty prescribed by law is death, upon what is known as circumstantial evidence?" It is insisted that the district attorney should have been compelled to modify the question by striking out the words "where the penalty prescribed by law is death" and insert "where the penalty prescribed by law may be death," and this because of a provision in the statute which permits a jury finding a party guilty of murder in the first degree to add "without capital punishment." We see no objection to the question. The defendant was not prevented from asking the question in the qualified form which is suggested, nor was any question propounded by him ruled out. There was no impropriety in permitting the government to search the mind of the juror to ascertain if his views on circumstantial evidence were such as to preclude him from finding a verdict of guilty with the extremest penalty which the law allows.

Finally, it is insisted that the court erred in permitting the government to introduce in evidence a statement made by the defendant to one R. H. Whipple, United States commissioner, before whom the preliminary examination was had—a statement reduced to writing and signed by the defend-

ant. Sections 307 to 311 inclusive of chap. 429, (30 Stat. 1319,) are relied upon to sustain this assignment of error. Those sections provide that on a preliminary examination, after the government's witnesses have been examined, the magistrate must inform the defendant that it is his right to make a statement in relation to the charge against him, that the statement is designed to enable him, if he sees fit, to answer the charge and explain the facts alleged against him, that he is at liberty to waive making a statement, and that such waiver cannot be used against him on the trial; they further provide that if he does waive his right to make a statement a memorandum thereof shall be made by the magistrate, but the fact of the waiver cannot be used at the trial; that if he chooses to make a statement the magistrate must take it in writing, propounding only certain specified questions; that his answer to each of the questions must be read as taken down, and he given liberty to make any corrections that he desires, and that such statement, so reduced to writing, must be authenticated in the following form. It must set forth that the defendant was informed of his rights in respect to making or waiving a statement; it need not contain the questions but must contain the answers, with the corrections or additions made by the defendant, it may be signed by him, but if he refuses to sign his reason therefor must be stated, as he gives it; and the whole must be signed and certified by the magistrate. The magistrate testified that before the preliminary examination was commenced the defendant voluntarily and without any suggestion insisted upon making a statement. Whereupon he, the magistrate, informed him that he was entitled to counsel, that he was under no obligations and need not make any statement, but that if he did it would be used against him on the trial, and also that if he waited an opportunity would be given to him to make a statement at the proper time; that notwithstanding this he insisted on making a statement, and it was then reduced to writing by the clerk of the court and signed and sworn to by the defendant; that after the examination had commenced and the testimony of witnesses for the government had been taken the statutory questions were put to him, and he was advised that he could then make a statement if he desired, but he refused to say anything. Upon this showing the statement was admitted in evidence. The magistrate also testified that after the examination was over and the defendant had been placed in jail the latter sent word that he wanted to talk with him about the case, and in an interview stated orally that his former statement was untrue, and volunteered a different account of the transactions. There was no contradiction of the testimony as to the circumstances under which these two statements—one written and the other oral—were made, except that in reference to the last statement defendant, when on the witness stand, testified that the magistrate "came up to the jail and ordered me to return to his office for the purpose of securing some information to arrest some other fellows, or

get some points of me of other parties." From this testimony it clearly appears that the statements were not made pending the examination or under the provisions of the statute, but voluntarily one before and the other after the examination; that the provision of the statute as to giving him notice pending the examination was complied with, and that at that time he declined to make any statement. So the question is whether voluntary statements made by a defendant before and after a preliminary examination are inadmissible in evidence because made to the magistrate who in fact conducted the preliminary examination. We know of no rule of evidence which excludes such testimony. Of course, statements which are obtained by coercion or threat or promise will be subject to objection. (*Bram* v. *United States*, 168 U. S. 532.) But so far from anything of that kind appearing the defendant was cautioned that he was under no obligations to make a statement; that it would be used against him if he made one, and that there was a proper time for him to make one if he so desired. Without even a suggestion, he insisted on making, prior to the examination, a statement which was reduced to writing and by him signed and sworn to, and after the examination was over and he had been placed in jail, he had an interview with the magistrate and volunteered a further statement. Affirmatively and fully it appears that all that he said in the matter was said voluntarily, without any inducement or influence of any kind being brought to bear upon him. Indeed, it is not claimed by counsel that there was any improper influence, his contention being only that the provisions of the statute with respect to a statement pending an examination were not complied with in respect to these statements. The statements were properly admitted in evidence. These are the only matters called to our attention. No errors appear in them, nor do we perceive any plain error otherwise in the record. The proof of defendant's guilt is clear and satisfactory, and the judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.